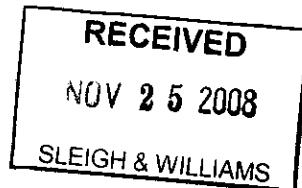


EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 DISTRICT OF VERMONT



5 JONATHAN CROWELL)
6 SAMANTHA KILMURRAY)
7)
8 Plaintiffs)
9 v.) CIVIL CASE NO. 2:08-cv-55
10)
11 ROBERT KIRKPATRICK)
12 MICHAEL GORMAN)
13 JEREMY EVANS)
14 CHUCK ALECK)
15 PETER DIMARINO)
16)
17 Defendants)

COPY

15 THE DEPOSITION OF ANDREW J. SCOTT, III
16 TAKEN IN THE INSTANCE OF THE DEFENDANTS
17 -----
18
19
20
21
22
23 Boca Raton, Florida
24 Thursday, November 20, 2008
25 1:05 p.m. - 4:15 p.m.

1 APPEARANCES
2

3 FOR THE PLAINTIFFS:
4

5 SLEIGH & WILLIAMS
6 364 Railroad Street
7 Suite E
8 St. Johnsbury, Vermont 05819
9 BY: DAVID C. SLEIGH, ESQ.
10

11 FOR THE DEFENDANTS:
12

13 MCNEIL, LEDDY & SHEAHAN
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15 Burlington, Vermont 05401
16 BY: NANCY GOSS SHEAHAN, ESQ.
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6					

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1

STIPULATIONS

2

3 IT IS HEREBY STIPULATED AND AGREED by and
4 between the attorneys for the respective parties hereto,
5 as follows:

6 1. That the testimony of ANDREW J. SCOTT, III
7 may be taken and treated as if taken pursuant to notice
8 and order to take deposition, and that all formalities
9 of notice and order are waived by the parties, and the
10 signatures of this stipulation are in like manner
11 waived;

12 2. That all objections except as to matters
13 of form are reserved until the deposition, or any part
14 thereof, is offered into evidence;

15 3. That the deposition may be signed by the
16 said ANDREW J. SCOTT, III before any Notary Public.

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* * *

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1 The deposition of ANDREW J. SCOTT, III was
2 taken before me, Lisa Gropper, RPR and Notary Public,
3 State of Florida, at 1515 N. Federal Highway, Boca
4 Raton, Florida, on November 20, 2008 beginning at 1:05
5 p.m. pursuant to the Notice in said cause for the taking
6 of said deposition, which is attached to the Court file
7 herein, at the instance of the Defendants in the
8 above-styled cause pending in the above-named Court.

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THEREUPON,

21

ANDREW J. SCOTT, III

22

having been duly sworn to tell the whole truth, as
hereinafter certified, testified as follows:

23

24

25

- - -

1 DIRECT EXAMINATION

2 BY MS. SHEAHAN:

3 Q Can you state your name and address for the
4 record, please.

5 A Andrew J. Scott, III, 750 Elm Tree Lane, Boca
6 Raton, Florida 33486.

7 Q Mr. Scott, my name is Nancy Sheahan. I
8 represent the defendants in this case.

9 I'm sure you've been deposed before; is that
10 right?

11 A Yes, ma'am.

12 Q All right. But if you have any questions, if
13 you need to take a break, just let me know, please.

14 A Okay.

15 Q Did Mr. Sleigh by any chance send down to you
16 a subpoena that we had sent to him for you to bring your
17 file and also an article that you had written called
18 "Use of Force - How Much is Too Much"?

19 A Yes, ma'am.

20 Q Did you bring your file and that article here
21 today?

22 A Yes, ma'am.

23 Q Can I see the article, please.

24 A Yes. I only brought one copy, so if we need
25 to make additional copies we'll do so.

1 MS. SHEAHAN: Can I have you mark that,
2 please.

3 (Thereupon, Defendants' Exhibit 1 was marked
4 for identification.)

5 Q Mr. Scott, I'm going to show you what's been
6 marked as Defendants' Exhibit 1 and ask you if you can
7 identify that, please.

8 A Yes, ma'am. It's an article I authored last
9 year for a publication called The Florida Defender.

10 Q What is The Florida Defender?

11 A I'm sorry, ma'am?

12 Q What is The Florida Defender?

13 A It's a quarterly publication that comes out
14 for the public defender's office for the State of
15 Florida.

16 Q Did somebody in particular ask you to write
17 this article?

18 A I believe the editor was aware of my
19 credentials and asked me if I would be interested in
20 creating a report relative to the use of the taser,
21 and --

22 Excuse me, let me backtrack that. Actually on
23 the use of force, and taser happened to also be part of
24 the article as a sidebar.

25 Q You said you authored this last year; is that

1 right?

2 A Yes, ma'am.

3 Q Do you remember the month?

4 A Yes, winter of 2007, Volume 19, No. 4.

5 Q Okay.

6 And then you brought your file; is that right?

7 A Yes, ma'am.

8 Q Is that it sitting in front of you?

9 A Yes.

10 Q You're looking to the side, but --

11 I wonder if we can just put a sticker on that
12 file. I'm not going to take the file away from you, but
13 if there's any question later on, if you can keep the
14 entire file intact, that would be great.

15 A Now or --

16 Q Right now.

17 A Okay.

18 (Thereupon, Defendants' Exhibit 2 was marked
19 for identification.)

20 Q Can you just give me the exhibit number,
21 Mr. Scott.

22 A 2.

23 Q So is Defendants' Exhibit No. 2 your file in
24 this case?

25 A Yes.

1 Q Can you describe for me the contents of your
2 file.

3 A We will start off with my report that I
4 generated, in addition to my C.V. and the testimony
5 list, and I believe perhaps a fee schedule was involved
6 in that as well.

7 I have notes that I've taken keeping track of
8 time; I have the report from Gordon Black; I have the
9 report from the Office of the Attorney General on this
10 matter; I have various Brattleboro Police Department
11 policies, including a "Subject - Use of Force" effective
12 date February 19, 2008; I have another Brattleboro
13 Police Department policy, "Subject - Use of Force"
14 effective date December 17, 2003; I have another
15 Brattleboro police policy and procedures on weapons, but
16 I can't seem to find it just yet. Hold on.

17 Oh, here it is. It's titled "Department of
18 Weapons and Training", effective date April 1, 2004.

19 I also have a copy of another policy from the
20 Brattleboro Police Department, "Use of Force", and this
21 one was dated October 26, 2007, and this was pulled off
22 of the internet.

23 I have a host of documents that were submitted
24 to me by Mr. Sleigh. Would you like for me to go down
25 through each individual --

1 Q No. Are those documents Bates stamped down in
2 the corner, Mr. Scott?

3 A Yes, they are. They're Bates stamped 000001
4 thru 000145.

5 I have the Complaint and Defendants' Answers
6 on this matter; I also have the initial Complaint and
7 Jury Trial Demand; I have some email correspondence with
8 Mr. Sleigh, initial letter -- excuse me, letter dated
9 October 20, 2008 indicating the deposition, Notice of
10 Deposition; I have a subpoena regarding this case; as I
11 mentioned some other email correspondence, and a letter
12 of engagement, and also a letter sending me my retainer
13 check.

14 I also have as part of my file the
15 International Association of Chiefs of Police "Model
16 Policy on Electronic Control Weapons" dated August 2005;
17 I also have an article discussing taser liability from
18 the FBI LEEDA, L-E-E-D-A, publication called The
19 Insider, dated October 2008, Issue 3; and I have the
20 CALEA standards, which is not part of the file, 5th
21 Edition; and I also have a CD with interviews of four
22 officers of the Brattleboro Police Department.

23 Q Does that about do it?

24 A I think so, ma'am. If there's something, if
25 there's an oversight, it's minimal.

1 Q May I see the notes that you were referring
2 to.

3 A Sure. There's some notes, and then there are
4 some others here as well (indicating).

5 Do you want me to take them out of the file,
6 ma'am?

7 Q Yes, actually that would be helpful.

8 A Well, actually it's just a listing of the time
9 that I've used on this case, but it is not current.

10 Q Mr. Scott, the notes on the yellow legal pad,
11 would it be fair to say that these are your notes from
12 reviewing the interviews of the officers with the
13 Attorney General's office?

14 A I'm not sure if they're with the Attorney
15 General's office, but they are interviews of the
16 Brattleboro Police Department officers.

17 Q The interviews that you listened to are --

18 A Yes, ma'am.

19 Q -- on the CD?

20 A Yes.

21 Q So are these part of your file?

22 A Yes, ma'am, they will be.

23 Q Then these are the other notes to which you
24 were referring; is that right?

25 A Yes.

1 Q These appear to be notes of the time that you
2 have spent on this file. Would that be correct?

3 A Up to the date of September 21, 2008. I've
4 not updated it.

5 Q Then also from your file may I see the emails
6 that you were referencing, and the correspondence too
7 while you're in that part of the file.

8 A Why don't we do this, Counselor, to make life
9 easier here for everybody here, you can take a look at
10 the file, and I'll just direct you to where they're at.

11 Q All right, that will work.

12 A There you go.

13 That would be what you're looking for on that
14 side (indicating).

15 MS. SHEAHAN: Off the record.

16 (Thereupon, a discussion was had off the
17 record.)

18 Q So, Mr. Scott, that one-page notation of the
19 times that you've spent on this case, is that the only
20 thing you have by way of billing other than the original
21 retention?

22 A What do you mean, I'm sorry, Counselor?

23 Q In other words, in terms of billing on this
24 file --

25 A Oh, sure.

1 Q -- it's that one-page sheet and then obviously
2 whatever the initial engagement was? Is that it for
3 billing?

4 A That's correct. I haven't billed anything
5 else as of yet. I'm not sure what the amount of hours
6 I've used in the case thus far, but it just indicates on
7 these notes, you know, an hour was on 11/17; you know,
8 on 11/18 another hour was spent on another deposition;
9 and so on and so forth, which I usually transfer to one
10 sheet that makes it easier for me to calculate the time
11 just in case, you know, the client wants to take a look
12 at it. And then what I'll do is, once the retainer's
13 expired, then I will send a bill with the appropriate
14 amount of hours showing the deduction of the retainer.
15 So that will be -- that should be forthcoming.

16 Q Are there any other documents or material that
17 you've reviewed in connection with your work on this
18 case that is not included in your file?

19 A No, other than I mentioned to you the CALEA
20 standards.

21 Q The 5th edition, correct?

22 A The 5th edition, correct.

23 And I just checked the -- some of the
24 standards that have been cited in the Brattleboro Police
25 Department use of force policy just to compare what this

1 states in the standard relative to their policy, and I
2 can get you a copy of that particular standard that's
3 cited if you so desire.

4 Q Which standard is that off?

5 A 1.31.

6 Actually 1.3.1.

7 Q Other than the CALEA standards, is there any
8 material or document that you've reviewed in connection
9 with your work on this case which is not included in
10 your file?

11 A No.

12 Q Now, Mr. Scott you've served as an expert for
13 both plaintiffs and defendants; is that right?

14 A Yes, ma'am.

15 Q In connection with acting as an expert
16 witness, have you also testified on behalf of plaintiffs
17 and defendants?

18 A Yes.

19 Q In terms of civil cases, what percentage of
20 your testimony would have been for plaintiffs and what
21 percentage for defendants?

22 A Approximately 75 percent for plaintiffs and
23 the remainder for defendants.

24 Q About how many of those cases have been in
25 federal court?

1 A About 95 percent of them. Maybe a little bit
2 less. I haven't paid attention to it.

3 Q The majority fair to say?

4 A Yes, ma'am.

5 Q So then is it fair to say you've become
6 familiar with the requirement in federal court that you
7 provide a written report of your opinions and the basis
8 for your opinions and the data that supports those
9 opinions?

10 A Yes, ma'am.

11 MS. SHEAHAN: Let's mark that.

12 (Thereupon, Defendants' Exhibit 3 was marked
13 for identification.)

14 Q Mr. Scott, did you prepare such a report in
15 this case?

16 A Yes, I did.

17 Q Would that be the report dated September 18,
18 2008?

19 A May I take a look at that if it's going to be
20 included as an exhibit?

21 Q Well, I was going to ask you if this is the
22 report dated September 18, 2008.

23 A I just want to make sure you have all the
24 pages.

25 (Thereupon, the witness reviews the document.)

1 A Yes, it is.

2 Q Have you prepared any written reports in
3 connection with this case other than what's been marked
4 as Deposition Exhibit 3?

5 A No, ma'am.

6 Q The material and documents that are in your
7 file, were any of those reviewed by you for the first
8 time after September 18th?

9 A Yes, the -- the FBI LEEDA Insighter.

10 Q Do you recall when it was that you reviewed
11 that?

12 A Sometime in October of this year.

13 Q Now, does your file contain all the notes or
14 material that you prepared during the course of your
15 work in this case, including any drafts of your report?

16 A No, it doesn't have the drafts, simply because
17 they were just typos. So I -- after I completed the
18 report I didn't print it out. I completed the report,
19 reviewed it, corrected some typos, but the substantive
20 part of the report as you see it today is what was
21 created, other than some typos after reviewing it.

22 Q Other than those typos have there been any
23 changes, corrections or amendments to your report?

24 A Perhaps -- no, there has been no written
25 amendment, but I do want to make it clear that I did not

1 get these depositions until about a week ago, and those
2 are the depositions from the Brattleboro Police
3 Department officers.

4 Q In connection with your review of those
5 interviews of the officers, did that in any way change
6 your opinions in this case?

7 A No, ma'am.

8 MS. SHEAHAN: Can I have you mark that.

9 (Thereupon, Defendants' Exhibit 4 was marked
10 for identification.)

11 MS. SHEAHAN: While you're at it, would you
12 mark this.

13 (Thereupon, Defendants' Exhibit 5 was marked
14 for identification.)

15 Q For the record, Mr. Scott, could you identify
16 what's been marked as Exhibit No. 5.

17 A It appears to be a portion of my letter of
18 engagement.

19 Q Would it be accurate to say that that is your
20 fee schedule?

21 A Yes, ma'am.

22 Q Is that the fee schedule that applies to this
23 case?

24 A Yes.

25 Q Now could you take a look at Deposition

1 Exhibit 4.

2 (Thereupon, the witness reviews the document.)

3 A Yes, ma'am.

4 Q What is Deposition Exhibit 4?

5 A It is my curriculum vitae.

6 Q Is that a complete and accurate copy of your
7 current C.V.?

8 A Yes. That's the most updated copy.

9 MS. SHEAHAN: Let's mark this.

10 (Thereupon, Defendants' Exhibit 6 was marked
11 for identification.)

12 Q Mr. Scott, I'm going to show you what's been
13 marked Deposition Exhibit 6, which is a document that
14 you handed to me at the start of this deposition. Can
15 you identify that for me, please.

16 A It's a testimony list of all cases that I've
17 testified in, either deposition or by trial.

18 Q Is that a current list?

19 A Yes.

20 Q Mr. Scott, how much of your annual income do
21 you derive from providing expert testimony?

22 A For which year?

23 Q Well, let's say 2007.

24 A Approximately 35 percent.

25 Q How about so far for 2008?

1 A Approximately 80 percent.

2 Q Have you personally ever brought a lawsuit?

3 A No.

4 Q Have you ever been sued?

5 A Yes.

6 Q By whom?

7 A I can't specifically remember the name of the
8 first lawsuit. It was a robbery suspect who pointed a
9 gun at me and I subsequently shot them. Did not kill
10 him. Wound up -- while he was in prison he wound up
11 suing me for civil rights violation.

12 Q What was the outcome of that case?

13 A Dismissed for prejudice.

14 Q Any other lawsuits?

15 A No.

16 Q Now, Mr. Scott, you have served as a police
17 officer; is that right?

18 A Yes, ma'am.

19 Q When did you start in law enforcement?

20 A 1976.

21 Q For what department?

22 A Dania Beach Police Department.

23 Q I'm sorry?

24 A Dania, D-A-N-I-A.

25 Q Where is Dania?

1 A Dania is just south of Fort Lauderdale on the
2 east coast.

3 Q How were you employed prior to that?

4 A Prior to that?

5 Q Yes.

6 A I was employed as -- full-time employee with a
7 grocery store referred to as Winn Dixie.

8 Q Don't have them in Vermont, but I've seen them
9 down here.

10 All right, Mr. Scott. When did you attend the
11 police academy?

12 A April of 1978.

13 Q Was that here in Florida?

14 A Yes.

15 Q So given the fact that you attended the police
16 academy after you were working with the City of Dania,
17 is it fair to assume that you were working part-time for
18 Dania?

19 A I was working as an auxiliary officer and had
20 attended an auxiliary police academy prior to that.

21 Q Was that also with the State of Florida?

22 A Yes.

23 Q Now, following the police academy who did you
24 work for?

25 A North Miami Police Department.

1 Q How long did you work for North Miami Police
2 Department?

3 A Approximately three-and-a-half years.

4 Q What was your rank when you left?

5 A Police officer.

6 Q Why did you leave the North Miami Police
7 Department?

8 A To go to North Miami Beach Police Department,
9 better opportunities, better equipment, better pay.

10 Q So North Miami PD is different than North
11 Miami Beach PD?

12 A Yes. It's a different municipality.

13 Q Okay.

14 A But they border each other.

15 Q How long did you work for North Miami Beach
16 PD?

17 A Approximately 16-and-a-half years.

18 Q What did you do while you were with North
19 Miami Beach?

20 A Started out as a police officer, and then from
21 that position I was elevated into the detective bureau
22 as a crime scene investigator investigating all types of
23 crimes from a forensics perspective, including
24 homicides.

25 Q And you left in what year?

1 A 1998.

2 Q What was your rank when you left?

3 A Assistant chief.

4 Q Did you retire?

5 A Yes.

6 Q How old were you when you retired?

7 A 43.

8 Q That's the job to have.

9 All right. After retiring from North Miami
10 Beach, is that when you became chief of Boca Raton PD?

11 A Yes.

12 Q When were you appointed chief?

13 A October of 1998.

14 Q When did you leave Boca Raton?

15 A February 1st or 2nd of 2006.

16 Q Did you retire?

17 A Resigned.

18 Q Why did you resign?

19 A I had a disagreement with the union and the
20 union took exception to a decision I made and
21 subsequently had a vote of no confidence, and I
22 subsequently decided it would probably be best if I
23 resigned as opposed to going through the aggravation.

24 Q What was the decision that you had a
25 disagreement with the union about?

1 A Pretty simple actually, but it turned out to
2 be, you know, a political quagmire.

3 There was a member of the community that got
4 involved in a drunken altercation at a local restaurant.
5 He subsequently got arrested and I was notified by both
6 my staff and by citizens that this individual had been
7 arrested. Came to the police department to see what the
8 issues were, what the situation was.

9 Long story short, I authorized the individual
10 to be released from my jail after he was booked to go
11 with his attorney pending turning himself into the
12 county jail on Monday. This was over a weekend. My
13 decision to authorize him to be released from our jail
14 after his booking was due to his well-known heart
15 condition, and I felt that if his -- he went down to the
16 county jail that night he might exacerbate if not get
17 involved in another altercation which would create --
18 and if he got -- if he died from his heart condition he
19 would -- I'd have some significant issues.

20 So that was my decision, and subsequently the
21 union took exception to it.

22 Q What was your relationship to this individual
23 for whom you made these arrangements?

24 A Relationship was nothing more than I had with
25 many of my other constituents. The one thing that he

1 did do -- excuse me, that's going to sound bad on the
2 deposition. The one thing he contributed to is I had a
3 charity for our kids during Christmas called Shop with a
4 Cop, and he was a donor of about \$1,500 each year where
5 we take about 25 disadvantaged kids to breakfast and
6 then we take them shopping with that money and
7 subsequently prepare them for Christmas and what have
8 you. And so the only extraordinary relationship I had
9 with him was the fact that he was a donor over the
10 course of the years, as were many other individuals
11 within the city.

12 Q Would you consider him a friend?

13 A No.

14 Q Did you ever have any type of business
15 association with him?

16 A No.

17 Q What was this individual's name?

18 A Greg Talbot, T-A-L-B-O-T. I'm not sure if
19 there's another T.

20 Q Mr. Scott, were there ever any ethics
21 complaints filed against you when you were with North
22 Miami Beach or with Boca Raton?

23 A With Boca Raton I had a few ethics complaints
24 filed. I had a former deputy chief who filed I think
25 two ethics complaints during that seven-year period.

1 They were summarily dismissed. I had a third ethics
2 complaint related to this incident with Mr. Talbot that
3 was dismissed. And I had a fourth ethics complaint
4 around the same time with regards to Mr. Talbot, and it
5 regarded a news reporter, investigative news reporter
6 that was seeking an interview from a handyman who had
7 scammed an elderly couple within our community on some
8 work. She was trying to get an interview with him so
9 she could get some type of reparations back to the
10 elderly couple. She asked if we could try -- she asked
11 if we would ever stop him could we -- could she have an
12 interview with him, and I said well, explain yourself.

13 Well, apparently she had been sitting on the
14 house for a couple of weeks trying to get an interview
15 from him but she found that she couldn't. He would
16 leave his residence all different times, run through the
17 stop signs, run red lights, make immediate U-turns in
18 the middle of the street and so on and so forth.

19 So we looked into it, because we thought
20 perhaps there was some drug dealing going on. We were
21 not convinced the drug dealing was indeed going on.

22 So I had authorized an officer to assist her
23 to set up where this individual would run the stop sign
24 and stop him -- if he were to run and violate the law,
25 you stop him, issue him an appropriate citation, and

1 then subsequently if he wants to stick around for an
2 interview that's fine.

3 And so that's what transpired. One day he did
4 run a stop sign. One of our officers was there. He was
5 issued a citation and the reporter was notified and was
6 on scene close by. Our officer on the scene said to the
7 driver listen, if you want to speak to this individual
8 you can or you're free to go, and he chose to speak to
9 her.

10 An ethics complaint was filed. Subsequently
11 stipulated -- I stipulated to an agreement.

12 Q What exactly was the nature of the complaint?

13 A Oh, misuse of my public official -- my
14 official position.

15 Q Okay.

16 A I kind of put the cart before the horse.

17 Q No, I would have asked --

18 A I figured we'd get to it.

19 Q I would have asked you for the specifics, but
20 somewhere in there I figured there was a charge.

21 So the actual charge was misusing your
22 official position, correct?

23 A That's correct.

24 Q Am I correct that essentially, if you had to
25 summarize it, it was somehow using your position to

1 assist this reporter?

2 A Assist a reporter in acquiring an interview,
3 setting that up.

4 Q You said you stipulated to a finding that you
5 had committed a violation; is that correct?

6 A I stipulated -- no, that is not the case.

7 Q What did you stipulate to?

8 A The stipulation was I did not commit a
9 violation; however, the ethics commission would be able
10 to determine as such, and so that was the stipulation.

11 And it was a business decision frankly,
12 Counselor. I had spent approximately -- we had spent
13 approximately \$26,000 just based on the two ethics
14 complaints initially, and the state had said to me
15 listen, we'll drop the Talbot -- we'll dismiss the
16 Talbot ethics complaint but we want you to stipulate to
17 a finding of fault. And I said I'm not going to
18 stipulate to a finding of fault, but I'll stipulate to
19 the following, through my attorney obviously, that I
20 admit no guilt or no fault and that you can find me at
21 fault if you desire, and that's what it was. And it was
22 a business decision because I was going to have to spend
23 about another \$40,000 for it to go to an administrative
24 hearing and I -- it was a business decision.

25 Q Was any fine imposed as a result?

1 A Yes, ma'am. There was -- the stipulation was
2 a \$5,000 fine.

3 Q Have you paid that fine?

4 A Yes, ma'am.

5 Q When did you pay that?

6 A This year. I can't remember when though.

7 Q When was the ethics complaint filed, the one
8 involving the reporter?

9 A They filed in 2005.

10 Q Was there any kind of reprimand or censure?

11 A Yes. The governor censured me, publicly
12 censured me. That was part of the stipulation.

13 Q Now, Mr. Scott, what did you do after leaving
14 Boca?

15 A I wound up working for a restoration company,
16 it's a construction restoration company, as the COO, and
17 this particular company focused on disaster reparation
18 and rebuilding of homes, businesses should a disaster
19 occur, fire, tornado, hurricane, what have you.

20 Q What's the name of the --

21 A Antol, A-N-T-O-L, Restoration.

22 Q How long did you work for Antol Restoration?

23 A Approximately 10 months.

24 Q What construction experience did you have?

25 A I had none. However, I had significant

1 management experience and I also was very familiar with
2 dealing with emergency management, and they needed
3 somebody to manage the company and to hopefully let it
4 grow and I would be able to manage that oversight.

5 Q Why did you leave Antel (phonetic)?

6 A Antol?

7 Q Antol.

8 A I left simply because it just was incongruent
9 with what I think is my level of expertise and
10 knowledge, and so I decided well, let me move into the
11 consulting business and utilize what knowledge I have
12 over my 30-plus years as a police officer and as a
13 chief. So that's what prompted me. Best thing I ever
14 did.

15 Q So what did you do when you left Antol?

16 A I opened up my -- well, I had my AJS
17 Consulting company for about six years prior -- five
18 years prior to leaving the police department and I would
19 do some consulting work on accreditation, law
20 enforcement accreditation, but I thought I'd expand
21 that, given the knowledge base that I have, and go into
22 expert witness consultation and security consultation.
23 And I was hired -- I had a major client hire me in 2007
24 dealing with security and CPTED concepts, C-E-P-T --
25 excuse me, CPTED -- yeah, I think it's Crime -- oh, it's

1 C-P-E-T-D (sic), Crime Prevention Through Environmental
2 Design.

3 Q That's a mouthful.

4 A So I was able to attract a very good client
5 and progressively built my consulting business, expert
6 witness consulting business at the same time.

7 Q So is it fair to say then that AJS Consulting,
8 you provide expert witness services and you do security
9 assessments; is that right?

10 A Yes.

11 Q How much time does your company devote to
12 expert witness consultation versus security assessments?

13 A Right now?

14 Q Yes.

15 A At this time?

16 Q Yes.

17 A Right now it's a hundred percent expert
18 witness consulting.

19 Q When you left Antol and became more active in
20 AJS Consulting, about how much time was expert witness
21 versus security assessments?

22 A Security assessment was approximately
23 85 percent and expert witness consulting was about
24 15 percent of my time.

25 Q Do you have any employees with AJS Consulting?

1 A No.

2 Q So right now AJS Consulting does no security
3 assessments, correct?

4 A I do not have any clients that are desiring
5 that as of yet, but if a company was to call me I'd be
6 able to provide that for them.

7 Q What year did you start AJS?

8 A I have to go back to about 2003, 2004.

9 Q So you were still with Boca --

10 A Yes.

11 Q -- at the time you started this consulting
12 company?

13 A Yes.

14 Q So since leaving Antol, other than AJS, have
15 you had any other employment?

16 A I've opened up two other companies. I've
17 opened up a company called The Evidence Storage Company.
18 The acronym is TESCO, T-E-S-C-O, and I'm currently
19 involved with a partner of mine with a company called
20 Scott Roberts & Associates, and we do employment
21 screening, tenant screening and background checks.

22 Q TESCO, where is that located?

23 A TESCO is not located anywhere yet. I use my
24 current home address. The company is not a viable
25 company as of yet due to the economic uncertainties. A

1 lot of money to expend if I were to get TESCO up and
2 running.

3 But to let you know, I could pull the trigger
4 on it in two weeks, get it up and running if everything
5 was right, if the universe was aligned.

6 Q I think you indicated that Scott Roberts &
7 Associates does employment screening, tenant
8 screening --

9 A And background checks.

10 Q And background checks, all right.

11 When did you start that company?

12 A In January of this year.

13 Q So January 2008?

14 A Yes.

15 Q Is that an active business?

16 A Yes, very active.

17 Q Where is that located?

18 A West Palm Beach.

19 Q What is your position with the company?

20 A Vice president and principal. I have a
21 partner who's president and principal.

22 Q What is your partner's name?

23 A Robert Buchholz, B-U-C-H-H-O-L-Z.

24 Q Do you have any employees?

25 A Yes, two.

(Witness produces business card.)

2 Q Thank you. Nice card.

3 How much of your annual income is from AJS and
4 how much is from --

5 Is it Scott Roberts?

6 A That's correct.

7 A hundred percent from AJS. We anticipate
8 that to change nicely in 2009, so that percentage will
9 start to seek some balance.

10 Q So with AJS you started that while you were
11 working with Boca and therefore your involvement was
12 limited to assessments; is that correct?

A Law enforcement accreditation.

14 Q Accreditation, okay.

15 As that evolved, what other areas did you
16 consult on with AJS up until the present time?

17 A I'm not understanding the question.

18 Q You started out doing accreditations. Did you
19 do any other work in terms of consultations while you
20 were with --

Well, you still are, but while you have been
with AJS.

23 A No, a hundred percent of that company was
24 focused solely on law enforcement accreditation in its
25 infancy up until the time that I moved into the expert

1 witness consultation.

2 Q The expert witness consultation that you've
3 done with AJS, is that limited to matters that are in
4 litigation?

5 A No.

6 Q What other areas have you provided expert
7 services on?

8 A Some criminal cases. Not many. And also from
9 time to time an insurance company will call me. And
10 thus far I've only had one so I can only say one at this
11 time. An insurance company asked me to assist them in
12 discerning what had transpired at a particular home
13 where a homeowner claimed something had happened, and it
14 involved the accidental discharge or the alleged
15 accidental discharge of a firearm.

16 Q In your capacity working with AJS Consulting,
17 have you done any work for police departments --

18 A Yes.

19 Q -- other than the accreditations that you did
20 originally?

21 A Yes. My testimony list will reflect that I
22 have police departments as clients, and there are others
23 that I've not provided testimony for that are my clients
24 as well.

25 Q If you haven't provided testimony for them

1 what services do you provide to them?

2 A Right now they've -- they would hire me on a
3 particular case. For example, the Village of
4 Southampton, New York has hired me. The case has kind
5 of drug on for about a year. They've asked me to review
6 some documents. This is related to a taser case
7 involving a death of the individual. So those types of
8 things where I have not been deposed yet.

9 And there may be some cases, and I can't think
10 off the top of my head, that I've provided reports that
11 I've not gotten to either be deposed or deposed to go to
12 trial -- or subpoenaed to go to trial.

13 Q What other police departments other than the
14 Village of Southampton, New York Police Department have
15 you offered your services to?

16 A I always seem to lose track of these. The
17 City of Aventura Police Department in Florida.

18 Q The city of what?

19 A Aventura Police Department, A-V-E-N-T-U-R-A.

20 Q Okay. Any others?

21 A Yes, Albuquerque, New Mexico Police
22 Department. I have a few cases with them.

23 Q Your cases with Albuquerque, are they all in
24 litigation?

25 A Yes.

1 Q What about the City of Aventura?

2 A Yes.

3 Q Any others?

4 A Yes, Counselor, there are. I always forget
5 what they are, but there's about another two or three
6 other clients, and I apologize for that.

7 Q Now, it sounds like the case with the Village
8 of Southampton involves a use of force claim; would that
9 be fair?

10 A Wrongful death, excessive use of force, yes.

11 Q What about the case with the City of Aventura?

12 A It would be a taser case.

13 Q And the cases with Albuquerque?

14 A One involves a wrongful death suit involving a
15 police chase, and the other involves a use of force case
16 involving a taser.

17 Q With the City of Aventura case involving the
18 taser, just briefly what are the allegations in that
19 case?

20 A Excessive use of force with the use of a
21 taser.

22 Q But give me a little bit of the facts.

23 A There were two police officers working off
24 duty at a bar. It was late at night, probably two or
25 three o'clock in the morning. Some patrons got into a

1 fight in the bar, and it was heavily attended, and the
2 fight kind of spilled out into the outside area. The
3 police officers attempted to break up the combatants and
4 what have you and then other individuals got involved in
5 the fray and the taser had to be deployed on I think two
6 individuals if I recall correctly based on the fact that
7 the individuals were trying to get at the officers
8 and/or attack the officers.

9 Q How about the taser case in Albuquerque?

10 A That involves a -- you know, a -- oh, in
11 Albuquerque. Yes, that involves an arrest of an
12 individual who resisted arrest, violently resisted
13 arrest.

14 Q Have you given depositions in the City of
15 Aventura case and the Albuquerque case both involving
16 tasers?

17 A No, not yet.

18 Q In any of the other cases in which you have
19 assisted police departments, have any of those gone to
20 trial?

21 A No.

22 Q Mr. Scott, when did you begin providing actual
23 expert witness services, what year?

24 A It would be late 2006. December of 2006 would
25 be my first case that I received.

1 Q Do you advertise your services?

2 A The only place I advertise is on the internet.

3 Q Do you have a website?

4 A Yes.

5 Q You do.

6 WWW.ajspoliceconsulting.com?

7 A Yes, ma'am.

8 Q If someone were to Google you, put in
9 something like police expert, would your name pop up?

10 A My website, yes.

11 Q Have you Googled yourself?

12 A Yes, but not too often because it's pay for
13 click.

14 Q Do you advertise your services anywhere other
15 than through the internet?

16 A There's one other expert service. It might be
17 HG Experts. And that's it.

18 Q What is your arrangement with HG Experts?

19 A And I'm not sure if that's indeed the name of
20 the company, but apparently they put me in some type
21 of -- and isn't this terrible I really don't know what
22 I'm getting. They provide access to attorneys who are
23 interested in certain police experts, and there's some
24 type of a data repository where they can come in and
25 take a look at who are the alleged experts and they can

1 pick and choose. I've never gotten a client off of that
2 particular directory.

3 Q Do you know if in fact you were to get a
4 client using HG Experts whether then you would pay some
5 fee to HG Experts for having connected you with this
6 client?

7 A No.

8 Q You don't know or you wouldn't?

9 A I apologize, Counselor. No, I do not pay any
10 additional fee. I pay them a fee each year to be
11 listed, but that's it.

12 Q Do you know how it was that Attorney Sleigh
13 managed to hook up with you in this case?

14 A I believe it was through the internet.

15 Q Have you at this point ever actually testified
16 in a trial for either plaintiff or defendant?

17 A Yes.

18 Q Can you tell me the caption of the case in
19 which you've testified in trial?

20 A As far as the who against who?

21 Q Yes.

22 If you're not able to do that, if you can
23 recall the name of the person for whom you provided the
24 expert testimony.

25 A It would be for the plaintiff on both counts.

1 Goodness. I can't remember, I apologize.

2 Q So it sounds like, and correct me if I'm
3 wrong, it sounds like there are two cases that you have
4 actually testified at trial?

5 A Yes, ma'am. One is federal court; one is
6 state court. Federal court down here in Broward County,
7 it was a plaintiff versus the Broward County Sheriff's
8 Office, and then another case just recently in the State
9 of Maryland involving an improper arrest based upon
10 improper photo array.

11 Q The case in federal court down here in
12 Florida, what did that case involve?

13 A That was excessive use of force involving a
14 taser.

15 Q When did you testify?

16 A Perhaps August, July or August of this year.

17 Q Just briefly what were the allegations in that
18 case?

19 A Excessive use of force by a law enforcement
20 officer in the use of the taser and -- involving a
21 traffic stop, involving a boyfriend and a girlfriend,
22 and the deputy allegedly utilized his taser improperly
23 and drove stunned an individual, and subsequently the
24 suit was brought forth.

25 Q In what way was the deputy alleged to have

1 improperly used his taser?

2 A He alleged that the individual, the plaintiff,
3 made a furtive move towards a driver's door of the car
4 that she was occupying, but she was outside, and he
5 claimed that she did not listen to his command and then
6 tried to get into the car and then allegedly brushed him
7 back with his hand -- with her hand as he tried to reach
8 her, and he subsequently drove stunned her twice.

9 Q What was the outcome of that case?

10 A It settled on behalf of the plaintiff.

11 Excuse me, I take that back, on behalf of the
12 defendants.

13 Q When you say settled on behalf of the
14 defendants --

15 A Excuse me.

16 Q -- what exactly do you mean by that?

17 A If we could strike that, the defendants
18 prevailed. In court, they prevailed in court.

19 Q So there was a defendants' verdict?

20 A Yes, thank you. I lost that terminology.

21 Q That's quite all right.

22 Mr. Scott, do you know if that case is on
23 appeal?

24 A Not to my knowledge.

25 Q I assume that case would be listed somewhere

1 in Deposition Exhibit 6?

2 A Yes. That would have been easier, Counselor.

3 Q There we go. Sometimes we get to use these.

4 (Thereupon, the witness reviews the document.)

5 A There we go. That would have been way too
6 easy. That one right there (indicating).

7 Q So I think you have your thumb on Mr. and Mrs.
8 Charles Barkley vs. Broward Sheriff's Office; is that
9 correct?

10 A Yes.

11 Q Stuart Address, is that the attorney who
12 engaged your services?

13 A Yes.

14 Q Do you know the name of the attorney
15 representing the defendants?

16 A Do not recall.

17 Q So we've covered the two cases in which you've
18 testified at trial; is that right?

19 A Yes, ma'am.

20 Q I assume, since you've testified at trial,
21 that you were either qualified as an expert witness or
22 at least not disqualified; is that fair?

23 A In both cases I was qualified as an expert.

24 Q Now, if I followed the emails correctly in
25 your file it appears that you may have actually been

1 retained in this case on August 29th; is that correct?

2 And feel free to look through the
3 correspondence.

4 (Thereupon, the witness reviews the document.)

5 A There was an email exchange on August 29th,
6 and it appears on September 3rd I received the
7 official notification, 2008.

8 Q When was your first contact in this case?

9 A That would be through an email dated
10 August 26, 2008 from Mr. Sleigh.

11 Q Had you previously worked for Mr. Sleigh or
12 anyone else in his firm?

13 A No.

14 Q Was that initial contact then by email? He
15 didn't call you first? Just sent you an email?

16 A I recall it was an email.

17 Q Since I don't have it in front of me, if you
18 can just look at it, what did Mr. Sleigh ask you to do
19 in that initial contact?

20 A The second to last sentence said, "I need an
21 expert to testify that the use of the taser as a pain
22 and compliance device was wrongful under these
23 circumstances."

24 And by the way, now that I think about it, I
25 believe Mr. Sleigh did contact me by phone first.

1 I got his email, and then I was in an airport
2 and I responded to his email shortly after I received
3 the email. So I got the email first and then I
4 contacted him by phone.

5 Q What information did Attorney Sleigh give you
6 during that first conversation?

7 A He gave me a very brief cliff notes example of
8 what transpired. He stated that there were two -- a
9 group of protestors in this particular town that were
10 protesting a possibility of a vacant lot being built up
11 for some type of either oil company or trucking depot, I
12 can't remember exactly what it was, and that some
13 individuals, the group of protestors, some of those
14 individuals -- excuse me, that the group of folks were
15 there, the police came out, spoke to them briefly, told
16 them they had to leave, explained to the protestors that
17 the officers would be back in a few hours and that they
18 needed to be gone, that once that had transpired there
19 was a discussion with the either supervisor or
20 supervisors that were there on the scene with the chief
21 of police discussing how to handle this, what's going
22 on.

23 The chief in the media alleged states --
24 allegedly stated that, you know, don't -- and I don't
25 know the exact words, but don't do anything out of the

1 ordinary. I can't remember the exact words based on
2 that telephone conversation.

3 They contacted the landowner and the landowner
4 wanted them off the property.

5 Subsequently they went back. The protestors
6 were all there. They contacted the landowner again.
7 The landowner said listen, you know, let them stay for
8 the night but get them off the property in the morning,
9 and subsequently that was relayed to them by the police
10 officers again when they arrived.

11 The following day in the morning time the
12 protestors were seen on the lot. In fact, there was
13 only two of them. And subsequently the lieutenant, a
14 couple of the lieutenants and a couple of officers
15 responded back to have them vacate the property. That's
16 when they found out that these two protestors had
17 attached themselves to a 55-gallon drum and were
18 refusing to leave and disengage from the drum.

19 After several attempts of discussion with the
20 protestors by the police officers discussing their
21 options, a decision was made to utilize the taser, but
22 prior to utilizing the taser actively that they would
23 show -- they would tell them they're going to utilize
24 the taser on them, they were -- if they didn't disengage
25 and get up and leave, and subsequently they refused to

1 leave and disengage.

2 The tasers were pulled out and simultaneously
3 both the female and the male protestor were tased the
4 first time. It's somewhat unclear as to when the female
5 disengaged, but the bottom line is the female disengaged
6 then either after a second drive stun -- the male did
7 not disengage until about the fourth or fifth drive
8 stun, and they were subsequently arrested.

9 That was it based on the conversation that I
10 had with Mr. Sleigh.

11 Q So that represents what you believe attorney
12 Sleigh relayed to you during your conversation over the
13 phone while you were in the airport?

14 A I have no other reason to believe anything
15 other than what he told me.

16 Q Did you render a preliminary opinion at that
17 time based upon the telephone call with Attorney Sleigh?

18 A I try not to, and I don't think I did in this
19 case simply because, and no offense to both attorneys
20 here, what's relayed to me and then what ultimately I
21 see in the documents sometimes are a little bit
22 different. Mr. Sleigh and I had that conversation.
23 I've had that experience; it's not a good experience.
24 And I asked him straight up, you know, what you've told
25 me is indeed what you feel is the essence of the case.

1 He did and -- he said that that was indeed the essence
2 of the case, and subsequently additional material was
3 sent out to me and --

4 Oh, he also informed me that there was an
5 Attorney General's report, investigation that was
6 conducted on this, that there was an independent
7 attorney for the City of Brattleboro that investigated
8 this as well. Both parties determined that the force
9 used was indeed excessive and unnecessary.

10 I do recall having a brief conversation with
11 Mr. Sleigh asking him why do you need an expert in this
12 matter, it seems to be pretty clear that it was, you
13 know, from two independent bodies, that it was excessive
14 force. And I don't recall the comment other than, you
15 know, I do need to have an expert for this and would you
16 be interested in the case based on what you've told me,
17 and yes, I'll except the case.

18 Q Did you accept the case during that telephone
19 conversation?

20 A Yes, with the caveat that what I get and what
21 he tells me are pretty much congruent.

22 Q And then Attorney Sleigh provided you
23 documents; is that correct?

24 A Yes, ma'am.

25 Q And then you reached an agreement which I

1 think is reflected in your retention letter; is that
2 right?

3 A My letter of engagement, that is correct.

4 Q Have you ever offered opinions prior to this
5 case involving any police department in the State of
6 Vermont?

7 A No.

8 Q Mr. Scott, what specific training and/or
9 experience do you have with the use of tasers?

10 A Back in 2001-2002 I was the first police chief
11 in Palm Beach County to bring tasers to my police
12 officers in Boca Raton. That decision was based upon
13 research done by one of my assistant chiefs and one of
14 my trainers relative to this technology that had become
15 available for us and that they did their research and
16 strongly recommended that the taser should be utilized
17 and deployed in the Boca Raton Police Department. That
18 was done and deployed to all of our officers in the
19 police department.

20 Taser International came out and trained our
21 officers and, in addition to, trained the trainer so to
22 speak, meaning they certified some of our officers to be
23 able to train in the taser, and during that training
24 period I did attend a portion of the class and I wanted
25 to see what the taser felt like, so I was hooked up to

1 the taser and appropriately jolted.

2 And then from there I took a refresher course
3 a few years -- a couple of years after that, and had a
4 refresher course on taser, a four-hour block of taser
5 and taser use.

6 And in 2005, late 2004 or 2005 I was
7 designated as the chair to create a model policy for the
8 chiefs of police and the sheriff in the use of taser for
9 Palm Beach County, and a committee was convened through
10 the Law Enforcement Planning Council of Palm Beach
11 County, and I chaired that committee, of which we had
12 the State Attorney, the medical examiner of Palm Beach
13 County, in addition to several chiefs of police and
14 trainers in varying police departments in Palm Beach
15 County, and created a model policy.

16 From that model policy -- it was distributed
17 to all of the agencies in Palm Beach County and they
18 could either adopt it, adjust it, manipulate it, so on
19 and so forth. That model policy was recognized by the
20 International Association of Chiefs of Police in their
21 conference here in Miami in 2005, if I recall correctly,
22 acknowledging the fact that Palm Beach County had
23 attempted to create a model policy for the use of the
24 taser.

25 Q So that I'm clear, Mr. Scott, this model

1 policy was created late 2004, early 2005; is that right?

2 A Yes.

3 Q Do you have a copy of that model policy?

4 A No, I do not.

5 Q Is that something that you could get? Does it
6 still exist?

7 A I would think you'd contact the Boca Raton
8 Police Department or the Palm Beach County Law
9 Enforcement Planning Council. I don't have it with me.

10 Q Is that anything that you looked at or relied
11 upon in formulating your opinion in this case?

12 A No.

13 Q Mr. Scott, have you ever spoken to either one
14 of the plaintiffs in this case?

15 A No.

16 Q I know you reviewed the interviews of the
17 officers that were taken by the Attorney General's
18 office. Have you reviewed the interviews of the
19 plaintiffs that were taken by the Attorney General's
20 office?

21 A No.

22 Q Have you reviewed any written statements given
23 by the plaintiffs?

24 A Let me check. It doesn't stand out in my mind
25 that I did, but let me take a look at what we've looked

1 at here.

2 (Thereupon, the witness reviews the
3 documents.)

4 A It doesn't list on my items reviewed. Let me
5 just make sure, one last thing.

6 (Thereupon, the witness reviews the
7 documents.)

8 A I don't think I did, ma'am.

9 Q You did review the police reports, correct?

10 A Yes.

11 Q Have you spoken to any witnesses?

12 A No.

13 Q Did you speak to Mr. Black who authored one of
14 the reports?

15 A No.

16 Q Have you spoken to anybody from the Attorney
17 General's office?

18 A No.

19 Q Now, is there anything that occurred on day
20 one of this event that impacted your opinion in this
21 case?

22 A Could you be a little bit more specific,
23 ma'am.

24 Q Well, day one being July 23rd, when the
25 initial report came to the police department regarding

1 these individuals on this piece of property, was there
2 anything that occurred during that day that impacted
3 your opinion in this case?

4 A Well, I think the only thing that was of some
5 significance was the conversation between Lieutenant
6 Kirkpatrick, I think there was a captain, the chief, and
7 I'm not sure if Mr. DiMarino, Officer DiMarino was
8 present, whereby they provided information to the chief,
9 and I believe the chief was pretty deliberate in his
10 statements with regards to -- either don't let this get
11 out of hand -- and I don't have that in front of me,
12 Counselor, and I apologize, or -- I don't have the exact
13 verbiage that the chief used, or allegedly used, and it
14 was just to, you know -- don't let this get out of hand
15 or don't do anything out of hand, something like that.

16 Q In what way did that conversation impact your
17 opinion in this case?

18 A Well, it just gave some indication that the
19 chief did not want anything out of the ordinary to be
20 done in this case in that they were protestors and they
21 weren't doing anything other than being on a particular
22 piece of property, and that, you know, be deliberate and
23 prudent is how I interpreted that conversation.

24 Q Let's turn to day two, July 24th, and
25 specifically --

1 I don't know if it's easier for you to refer
2 to your report. Do you have a copy of your report in
3 front of you?

4 A Yes, I do, ma'am.

5 Q Okay. Now, as you've noted in your report,
6 Mr. Scott, the plaintiffs were informed that they were
7 trespassing; is that correct?

8 A Yes, ma'am.

9 Q As you've also noted in your report, the
10 plaintiffs were advised that they would be arrested and
11 removed if they did not leave on their own; is that
12 correct?

13 A Yes.

14 Q Would you agree that the order to leave given
15 by the police was a lawful order?

16 A Yes.

17 Q Would you agree that the plaintiffs did not
18 comply with that lawful order?

19 A Yes.

20 Q And as a result of that the plaintiffs were
21 arrested, correct?

22 A Yes.

23 Q Do you have an understanding of the outcome of
24 the criminal charges against the plaintiffs?

25 A No, I don't.

1 Q But would you agree that the police officers
2 acted lawfully when they placed the plaintiffs under
3 arrest for unlawful trespass?

4 A Yes.

5 Q Do you agree that once the plaintiffs were
6 arrested for unlawful trespass that they were advised
7 that they needed to accompany the officers?

8 A Yes.

9 Q Do you agree that they refused to do so?

10 A Yes.

11 Q Do you agree that the plaintiffs were ordered
12 to undo themselves from the barrel and accompany the
13 officers?

14 A Yes.

15 Q Do you agree that the officers made attempts
16 to have the plaintiffs separate themselves from the
17 barrel?

18 A Yes.

19 Q What is your understanding of the attempts
20 that the officers did make to have the plaintiffs
21 separate themselves from the barrel?

22 A First they asked them to separate themselves,
23 to disconnect, and there was quite a bit of attempts to
24 do that, cajoling, if you want to use that word. So
25 that was used.

1 Then they contemplated and in fact attempted
2 to pull their arms out from the barrel, which was not
3 successful.

4 And then they contemplated doing something
5 with the barrel, and they initially called your public
6 works department, their public works department, and
7 conferred and -- as to how to get them separated. They
8 tried to shovel out some dirt that was inside the
9 barrel, but that was to no avail.

10 And then again they discussed with them, you
11 know, the options, and I believe Lieutenant Kirkpatrick
12 and in particular Officer DiMarino explained to the
13 individuals what might -- what would transpire had they
14 failed to comply again, and of which there was a
15 discussion as to the use of the taser on them, with the
16 protestors.

17 Q Would you agree that the plaintiffs were
18 advised that if they did not voluntarily detach
19 themselves from the barrel that they would be charged
20 with resisting arrest?

21 A Yes.

22 Q What's your understanding as to how the
23 plaintiffs were actually attached to the barrel?

24 A My understanding, that they had some type of
25 device around their wrist and there was a carabiner.

1 The carabiner was then attached to rebar that was
2 cemented inside the barrel.

3 Q Do you know if the police asked the plaintiffs
4 how they were attached to the barrel?

5 A Yes.

6 Q Did they in fact ask them how they were
7 attached to the barrel?

8 A Yes.

9 Q Would you agree that the plaintiffs refused to
10 inform the officers how they were attached?

11 A That is correct.

12 Can we take a break?

13 Q Sure.

14 (Thereupon, a recess was taken, after which
15 the following proceedings were had:)

16 Q (By Ms. Sheahan) Mr. Scott, I think when we
17 left off you had agreed that the plaintiffs did not
18 inform the officers how they were attached to the
19 barrel, correct?

20 A Correct.

21 Q Would you agree that they were perfectly
22 capable of telling the officers how they were attached?

23 A That is my understanding, yes.

24 Q Would you also agree that the plaintiffs had
25 the ability if they chose to do so to comply with the

1 officers' direction and detach themselves from the
2 barrel?

3 A Yes.

4 Q Would you further agree that each of the
5 plaintiffs had the ability to release themselves
6 independent of the other plaintiff?

7 A That's my understanding, yes.

8 Q So Ms. KilMurray could have released herself
9 even if Mr. Crowell chose to remain attached; is that
10 fair?

11 A She did that, yes.

12 Q Exactly. That's ultimately what happened?

13 A Yes.

14 Q Now, before this case were you familiar with
15 the device that was utilized by the plaintiffs in
16 attaching themselves to the barrel?

17 A Yes.

18 Q Did you ever encounter it while you were a law
19 enforcement officer?

20 A No.

21 Q Do you know what the device is commonly
22 called?

23 A No.

24 I can give you the vernacular in law
25 enforcement terms but -- I'm teasing.

1 Q Maybe you'd better not on the record.

2 How were you familiar with this device prior
3 to this case?

4 A Oh, we -- on one major occasion we had an
5 economic summit here in Boca Raton involving the big
6 eight nations, and it was right where Mr. Sleigh is
7 currently staying --

8 Q Naturally.

9 A And during that time there was also the North
10 American Free Trade Act Conference being hosted in
11 Miami, and we had numerous meetings with local Palm
12 Beach County law enforcement agencies, including the
13 sheriff, looking into some of the ways in which these
14 individuals have a tendency to protest. Beyond just the
15 violence, these individuals have means by which the
16 current plaintiffs in this case have used, in addition
17 to some other means to attach themselves that makes it
18 very difficult for law enforcement to separate them and
19 what have you. And so that's how we became very
20 familiar with those. But that did not transpire up
21 here.

22 Let me wrap that up. In preparation for the
23 economic summit, we were very concerned and we had
24 intelligence information that the protestors from NAFTA
25 down in Miami knew of the economic summit here and we

1 had anticipated to have protestors as well.

2 Q Just to be clear, did you ever have protestors
3 connected with the economic summit?

4 A No, fortunately we did not.

5 Q Did you follow what happened with other police
6 agencies who were in fact involved with protestors in
7 connection with this economic summit?

8 A Yes, I did, but I can't recall specifically
9 what that information was now.

10 Q So, Mr. Scott, you're aware I assume that the
11 purpose of the type of device that was utilized by the
12 plaintiffs in this case is to defeat an officer's
13 attempt to take an individual into custody and remove
14 them from the scene?

15 A Yes.

16 Q Other than your discussion in connection with
17 the economic summit back a few years ago, have you had
18 any training regarding these particular types of
19 devices?

20 A No, I have not.

21 Q Your discussions surrounding the economic
22 summit, was that to provide training or just sort of an
23 informational this is what we expect and it may come to
24 your area?

25 A That is correct and, you know, be prepared for

1 that and how they're going to be able to tie up traffic
2 and what have you.

3 We were particularly concerned about the
4 violence that was associated with these protestors
5 relative to NAFTA.

6 Q Mr. Scott, would you agree that the plaintiffs
7 in this case could have detached themselves from the
8 barrel without the necessity of any use of force by the
9 officers?

10 A Yes.

11 Q Would you agree that officers are allowed to
12 use some level of force in affecting an arrest?

13 A Yes, based on Graham vs. Connor and the type
14 of resistance that's being exhibited.

15 Q Do you agree that an officer does not have to
16 feel threatened before the officer is permitted to use
17 force on a subject that is being lawfully arrested?

18 A And that force must be reasonable, yes.

19 Q Let me ask you, do you agree that in fact the
20 plaintiffs were given warnings before the taser was
21 used?

22 A Yes.

23 Q Would you also agree that the officers
24 explained to the plaintiffs what was involved with using
25 the taser?

1 A Yes.

2 Q Mr. Scott, what is your training in connection
3 with nonlethal use of force?

4 A Every year we would be trained in nonlethal
5 use of force in the police department both at Boca Raton
6 Police Department and in North Miami Beach.

7 And actually it's less lethal use of force,
8 not nonlethal.

9 Q When was the last time you were actually
10 trained in the use of force at all?

11 A Back in 2005.

12 Q So when you were with Boca?

13 A Yes.

14 Q And I believe you said that you did a
15 refresher course regarding the use of the taser; is that
16 right?

17 A Yes.

18 Q When was that?

19 A 2005.

20 Q Are you certified in the use of the taser?

21 A No.

22 Q Are you or have you ever been certified as a
23 use of force instructor?

24 A No.

25 Q Are you certified as an instructor in any

1 particular area?

2 A I've been in -- I am a -- I was a certified
3 instructor in general to teach various courses for law
4 enforcement officers back in the '80s. I currently
5 teach criminal justice classes, including the use of
6 force, with Florida Atlantic University, Capella
7 University online.

8 Q I'm not sure if I quite understand. You teach
9 use of force but you're not a certified use of force
10 instructor?

11 A That's correct. I can teach in the concepts
12 of use of force but it does not mean I need to be
13 certified to teach that.

14 Q Who do you teach use of force to?

15 A College students as part of the whole concept
16 of the criminal justice system.

17 Q Does your instruction to college students
18 involve hands-on instruction?

19 A No.

20 Q Just sort of the theory as it relates to
21 criminal justice; would that be fair?

22 A Well, actually it dovetails beautifully into
23 theory versus practitioner and being able to dovetail
24 both of those as a practitioner and as an instructor.

25 Q I assume since you're not certified to use a

1 taser that you've never been certified as a taser
2 instructor?

3 A No.

4 Q What training if any have you had in dealing
5 with protestors?

6 A Oh, goodness, back in the day, in the '80s, we
7 would do -- and actually it continued to follow through,
8 we would have training on a regular basis involving
9 mobile field force down in Miami-Dade County and North
10 Miami Beach and then brought that concept up to Boca
11 Raton, the mobile field force, and how to deal with
12 protestors.

13 Q When was your last training in terms of
14 dealing with protestors?

15 A Probably either 2004 or 2005.

16 I did take great pride in participating in
17 significant -- aspects of training that I thought was
18 significant, and as a chief I felt it was necessary to
19 show my officers that I was also a police officer first
20 as opposed to a chief and I did need certain training.
21 Mobile field force was one of those.

22 Q Describe for me briefly what mobile force
23 training consisted of.

24 A That would be mobile field force training.

25 Q I'm sorry.

1 A And it was a concept that was developed by the
2 Miami-Dade Police Department right after one of our
3 major riots back in 1979 or 1980, and during that time
4 we had a significant riot down in Miami and a lot of
5 people were killed, and there was a question as to how
6 Miami-Dade and Miami police departments responded. So
7 they created the concept called mobile field force.

8 It's a contingent of 52 officers that are
9 trained in tactical approach to protestors, how to deal
10 with an unruly mob, how to deal with the ringleader so
11 to speak and what tactics to use.

12 I subsequently authored an article that took
13 that concept and referred to it as rapid deployment
14 squads. I took the mobile field force concept from a
15 larger agency and then just redeveloped it for smaller
16 agencies so they don't have the manpower to fulfill a 52
17 person contingency field force, and we manipulated it so
18 it would work for smaller agencies. So I authored an
19 article back in the '80s on that, and subsequently just
20 having refresher training on mobile field force either
21 every year or every other year.

22 Q Do these mobile field force units, for lack of
23 a better term --

24 A Training would probably be the better --

25 Q Okay. Well, in terms of the people that are

1 assigned to the mobile field force deployments, what
2 weapons are they entitled to use?

3 A Well, a mobile field force can utilize any
4 weapons that they choose to do so based upon the actions
5 of the individual or the protestor. So, for example, if
6 deadly force is being used or perceived being used on a
7 mobile field force officer, that individual may use
8 deadly force.

9 Q So there are no restrictions on the officers
10 who are assigned to the mobile field force unit in terms
11 of dealing with protestors?

12 A I'm not understanding the question.

13 Q In other words, if you're assigned to the
14 mobile field force unit and were responding to a
15 protest, there is no absolute prohibition that you
16 cannot use for example deadly force?

17 A No. That would be insanity.

18 Q Okay.

19 A Yeah. It clearly has to fall within the
20 purview of the policy and state statute in anything
21 that -- regardless if it was a field force participation
22 or if it was an individual officer on an off duty
23 incident.

24 Q Now, when you were describing the training
25 that you had with tasers, you had the refresher course

1 in 2005, so did you actually complete the course prior
2 to 2005?

3 A I did not go through the taser certification,
4 but I did take a taser refresher course. It was a
5 four-hour course.

6 Q So is it fair to say you really had one
7 training, one full block of training with respect to the
8 taser?

9 A Yes, formalized training, that's correct.

10 Q That's the one in 2005, correct?

11 A Uh-huh.

12 Q You have to say yes or no.

13 A Yes.

14 Q What model taser were you trained on?

15 A Don't recall.

16 Q Now, I think you mentioned earlier, I think it
17 was prior to 2005 you were actually tased; is that
18 correct?

19 A Yes.

20 Q When you were with Boca, did you require that
21 all officers that were being issued a taser actually
22 have the taser used on them?

23 A Yes.

24 Q When the taser was used on you, was it used in
25 the probe or drive stun mode?

1 A Probe.

2 Q How long a cycle were you subjected to?

3 A Five seconds.

4 Q What was your reaction when you were tased?

5 A Physically incapacitated and experienced
6 tremendous pain.

7 Q Were there any marks left from the taser?

8 A Yes.

9 Q What did those marks look like?

10 A Small burn holes on my back.

11 Q What diameter?

12 A I can't recall, Counselor.

13 Q Well, are we talking something the size of a
14 saucer or are we talking something the size --

15 A Less than a cigarette burn.

16 Q How long were those marks visible?

17 A About six weeks.

18 Q Did you experience any long term effects from
19 the tasing?

20 A What type of effects: Physical, emotional,
21 psychological?

22 Q Any.

23 A Yes. Physical, no; emotional and
24 psychological, I -- convinced of the utility of the tool
25 and that I did not want to get tased ever again.

1 Q So when you went through your refresher course
2 I assume that you were not tased?

3 A No.

4 Q Did you experience any posttraumatic stress
5 disorder from being tased?

6 A No, ma'am.

7 Q The emotional and psychological effects that
8 you just testified to, was it something that you
9 required counseling for?

10 A No.

11 Q Did you require any kind of medical treatment
12 at all?

13 A No.

14 I'm going to give you an example, ma'am, of
15 the psychological or emotional affiliation I had with
16 that.

17 As a young child, unbeknownst to you, you
18 would have touched a hot plate or a hot stove. You
19 would have recognized forever that you would never want
20 to touch a hot stove again. That is similar to my
21 experience with the taser. I would never want to get
22 tased again.

23 Q Have you ever had the taser used on you in the
24 drive stun mode?

25 A No, I have not.

1 Q When you were back in Boca, as part of your
2 training of officers, if they were going to carry
3 tasers, did you require that they experience the taser
4 in the drive stun mode?

5 A No.

6 Q So just the probes?

7 A Yes.

8 Q Why was that?

9 A I wanted to show the officers that the tool
10 that we were giving to them, if it got into the hands of
11 the subject, could be debilitating and could be very
12 dangerous. And so we wanted them to experience that in
13 the sense of how debilitating it was and that if anybody
14 ever got a taser on them that, you know, they were going
15 to be incapacitated and they were not going to be able
16 to defend themselves.

17 Q Why did you elect not to have the officers
18 experience the taser in the drive stun mode?

19 A Simply because it was not part of the
20 training, number one, and number two the majority of our
21 deployments, based on statistical analysis that we had,
22 was going to be in the probe deployment.

23 And the other thing is that the drive stun has
24 a tendency at times to leave significant burn marks.

25 Q More than the burn marks that you've described

1 that lasted six weeks in the probes?

2 A Yes.

3 Now, keep in mind, Counselor, that how those
4 burn marks impacted me, there are other individuals who
5 were tased, probes deployed, and they received no
6 markings.

7 Q Would that likewise be the case if the taser
8 is used in the drive stun mode?

9 A I believe so.

10 Q Did officers under your command in Boca carry
11 pepper spray?

12 A Yes.

13 Q Have you been trained in the use of pepper
14 spray?

15 A Yes.

16 Q And whether in training or otherwise have you
17 been subjected to pepper spray?

18 A Yes.

19 Q What was your reaction to being sprayed?

20 A Significant burning of the eyes, nasal,
21 throat, tearing, runny nose, burning sensation,
22 temporary blindness so to speak.

23 Q How long did you feel the effects of the
24 spray?

25 A Probably about a half-hour, 40 minutes.

1 Q I assume there was somebody there to help you
2 wash out the spray from your eyes?

3 A Yes.

4 Q Did you have similar emotional and
5 psychological reaction to the pepper spray as you did
6 with the taser?

7 A No.

8 Q So you would not mind being pepper sprayed
9 again?

10 A Absolutely -- well, let's put it this way,
11 Counselor. I wouldn't prefer to have either one of
12 them, but the pepper spray was burning and
13 uncomfortable, but no, it did not leave that thought in
14 my head that I gave you the example of the hot plate,
15 no.

16 Q Fair to say you don't know what your
17 psychological or emotional reaction would be to the
18 taser in the drive stun mode since you've never
19 experienced that?

20 A Let's say that it probably would be similar.
21 I wouldn't want to have to go through that, that's
22 number one, and number two I wouldn't want to have to go
23 through that again if it did happen. So it would
24 probably be similar to my O.C. experience and my
25 tasering experience and -- if I were to have been drive

1 stunned. Nobody wants to go through a series of painful
2 encounters if they don't have to.

3 Q Which is part of the purpose of pain
4 compliance devices, correct?

5 A A pain compliance is supposed to achieve
6 compliance of the officer's demands.

7 Q In terms of repeat customers so to speak would
8 you agree that if they have experienced the taser or
9 O.C. spray that, when advised that they are about to be
10 subjected to them again, that many of these subjects
11 will in fact comply with an officer?

12 A I wouldn't say many. I'd say the majority --
13 most of them -- majority of them would, but there are
14 some that don't.

15 Q Oh, absolutely. But there are a significant
16 number who would, in fact, comply?

17 A Yes.

18 Q When you were with Boca did you require that
19 all officers who are going to carry pepper spray be
20 subjected to the pepper spray?

21 A Yes.

22 Q When you were with Boca did your officers
23 carry some form of a baton, whether it be a PR-24 or
24 straight baton? I don't know what you used.

25 A We required them to carry an asp.

1 Q Have you ever carried an asp?

2 A Yes.

3 Q Are you trained in its use?

4 A Yes.

5 Q Have you ever been struck with an asp without
6 protective gear?

7 A Accidentally, yes.

8 Q In a training situation?

9 A Yes.

10 Q Did you require that officers under your
11 command be struck with an asp without protective gear
12 prior to being allowed to carry it?

13 A No.

14 Q Probably an obvious question, but why not?

15 A Because it could possibly do some physical
16 damage to them.

17 Q Now, have you ever actually used a taser?

18 A No.

19 Q Other than in training have you been present
20 when a taser was used?

21 A Yes.

22 Q When was that?

23 A That would be 2005 when I had my experience
24 with the taser jolt.

25 Q I'm sorry, other than in training.

1 A Oh, I apologize. No, no.

2 Q Have you ever carried a taser?

3 A No. Chose not to.

4 Q Who did you receive your taser training from?

5 A Taser International.

6 Oh, I -- which time?

7 Q Well, it sounds like your, I don't want to
8 call it real training, but your four-hour block of
9 training was in 2005.

10 A I'm not going to argue with you, Counselor,
11 with regards to that comment, but that was training. It
12 was not unreal training. So -- it was certified
13 training.

14 Q Okay. The certified training, who did you
15 receive that from?

16 A That would be from Tom Cicarellia. He was a
17 captain with the Boca Raton Police Department and he was
18 trained by Taser.

19 Q Other than the training you received from him
20 have you received any other formal training in terms of
21 how the taser works or its effects?

22 A Yes, International Association of Chiefs of
23 Police would hold seminars, and I've attended one of
24 them.

25 Q When did you attend that?

1 A Perhaps 2004.

2 Q Where was that?

3 A Los Angeles.

4 Q Was there a particular instructor for that
5 course?

6 A There were several of them but I don't know
7 their names or who they were.

8 Q Are you aware of any deaths that have occurred
9 as a result of using a taser in the drive stun mode?

10 A No.

11 Q At the time of this incident, so it would have
12 been July of 2007, were you aware of any nationally
13 accepted standards related to the use of tasers?

14 A Yes.

15 Q What are those standards?

16 A The model policy created by the International
17 Association of Chiefs of Police.

18 Q Is that the policy that you have here today?

19 A Yes.

20 Q Is that something you have separate in your
21 file that you can easily grab?

22 A Yes.

23 Q Can I just see that for a second?

24 A Sure.

25 Take a break?

1 MR. SLEIGH: Sure.

2 (Thereupon, a recess was taken, after which
3 the following proceedings were had:)

4 Q (By Ms. Sheahan) Mr. Scott, just looking at
5 the IACP policy --

6 MR. SLEIGH: Is that marked?

7 MS. SHEAHAN: It's part of his file, but if
8 you want --

9 MR. SLEIGH: Do you want to mark it just so
10 that we have a specific reference?

11 MS. SHEAHAN: Sure.

12 MR. SLEIGH: That would be great.

13 (Thereupon, Defendants' Exhibit 7 was marked
14 for identification.)

15 Q (By Ms. Sheahan) All right. Mr. Scott, we've
16 marked the IACP policy as Deposition Exhibit No. 7,
17 correct?

18 A Yes.

19 Q In Paragraph 2 it indicates that electronic
20 control weapons --

21 And I assume that includes tasers, correct?

22 A Yes.

23 Q That, "They will be used by authorized and
24 trained personnel in accordance with this use of force
25 policy and additional guidelines established herein."

1 Is there a use of force policy that the IACP
2 has?

3 A Yes, there's a standard model policy of which
4 I don't have with me.

5 Q That was going to be my question.

6 Did you look at that policy?

7 A I've looked at it before in previous cases. I
8 did not review it on this one.

9 Q Any particular reason you did not review it in
10 connection with this case?

11 A No.

12 Q Other than this model policy marked Deposition
13 Exhibit 7, were you aware of any other what you would
14 call nationally accepted standards related to the use of
15 tasers at the time of this incident?

16 A Oh, at the time of the incident?

17 Q Yes.

18 A No.

19 Q Were there any other articles, case law, any
20 kind of writing that you reviewed to determine the
21 accepted standard in the field of law enforcement for
22 the use of tasers in 2007?

23 A Any material that came out relative to the use
24 of tasers that was authored in 2007?

25 Q That would have been in existence in 2007,

1 specifically July 2007.

2 A No, I don't recall I did.

3 Q Do you have any familiarity in terms of how
4 courts have addressed the use of tasers in the context
5 of Graham vs. Connor?

6 A Can you be a bit more specific on that? I
7 think each circuit has -- if I recall correctly, there's
8 case law relative to each circuit, federal -- excuse me,
9 each federal district, if I recall correctly, or one
10 federal district may opine on how the taser is utilized
11 in the use of force spectrum and another district might
12 not have an opinion on that, so to clarify your question
13 a little bit --

14 Q Well, did you review any case law in terms of
15 how any particular court has viewed the use of taser in
16 the context of Graham vs. Connor?

17 A Yes.

18 Q What case law did you review?

19 A Beaver vs. the City of Federal Way.

20 Q What district is that case from?

21 A Western District of Washington in Seattle.

22 Q What year?

23 A 2007.

24 Q Any other cases?

25 A Graham vs. Connor, I reviewed that.

1 And by the way all of these are synopsized
2 from an article that I've used to give my opinion on
3 this, which is out of the FBI LEEDA magazine called The
4 Insighter.

5 Let's just stay with what I've just gone with.

6 Q So you located those cases from this article?

7 A Yes.

8 MS. SHEAHAN: Let's mark this one, too.

9 (Thereupon, Defendants' Exhibit 8 was marked
10 for identification.)

11 Q Mr. Scott, I'm just going to show you what's
12 been marked as Deposition Exhibit 8 and ask you if this
13 is the FBI article to which you have referred.

14 A Yes.

15 Q I'm sorry, what was the date of this
16 publication?

17 A October 2008.

18 Q So this is something that you reviewed after
19 you issued your opinion in this case; is that correct?

20 A Yes, ma'am.

21 Q Are there any articles or case law, other
22 writings that you reviewed to determine accepted
23 standards in law enforcement for dealing with protestors
24 in 2007?

25 A No.

1 Q Are you aware of any state which has adopted a
2 statewide standard for taser use in 2007?

3 A No, I'm not.

4 Q Are you aware of any state which adopted a
5 statewide standard for dealing with protestors in 2007?

6 A No, ma'am.

7 Q So going back to July 24th of 2007 do you
8 agree that, after warning the plaintiffs that they were
9 going to use the tasers and that the tasers were going
10 to hurt, that the officers used the tasers on the
11 plaintiffs in the drive stun mode?

12 A Yes.

13 Q What's your understanding as to, with respect
14 to the first time the plaintiffs were tased, how long
15 they were tased for?

16 A I believe it was a second.

17 Q Do you know which officer tased Mr. Crowell?

18 A No.

19 Q Do you know which officer tased Ms. KilMurray?

20 A You know, off the top of my head, no, I don't.
21 At this deposition, no.

22 Q In terms of anything in your report as to
23 which officer tased which plaintiff and for how long,
24 what would the source of your information be?

25 A It would be the reports that I received from

1 Mr. Black, I believe his name was, Gordon Black, and
2 also from the Attorney General's office, and then
3 subsequent to that I received additional material from
4 Mr. Sleigh relating to the officers' reports.

5 Q So did you also look at the officers' reports
6 in terms of determining that information?

7 A I can't remember if it was from their reports
8 specifically. I just know that the information was
9 within all the material that I provided you.

10 Q I take it you would agree that when an officer
11 uses a taser by deploying the probes the result is the
12 immobilization of the subject?

13 A Incapacitation, yes. That's the goal. It
14 doesn't work all the time.

15 Q Would you agree that when an officer uses the
16 taser in the drive stun mode that it is being used as a
17 pain compliance tool?

18 A Yes.

19 Q Let me ask you, are you aware that there have
20 been discussions about whether there should be a limited
21 number of cycling when the taser is used in the probe
22 mode?

23 A Yes, there has been discussions both in law
24 enforcement -- in particular law enforcement.

25 Q Are you aware of similar discussions regarding

1 limiting the number of times or duration of a taser when
2 it's used in the drive stun mode?

3 A Did you just ask that question, Counselor?

4 Q I asked in the probe mode prior to that.

5 A Oh, I -- okay, I'm sorry.

6 To go back to your probe mode, yes, very
7 specifically there's a policy out there that suggests no
8 more than three times that the taser should be cycled.

9 As far as the drive stun mode, no, I don't think that
10 there has been a standardized number of the number of
11 times.

12 Q So there's no maximum number of times that a
13 taser should be used when it's in the drive stun mode?

14 A No.

15 Q That --

16 A Reasonableness though is the key.

17 Q So it would entirely depend on the
18 circumstances, would you agree?

19 A Totally.

20 Q Was it your experience when you were in Boca
21 that once you began using the taser injuries to officers
22 and subjects went down?

23 A Yes, and complaints went down, although I did
24 have some officers that inappropriately used the taser.

25 Q Have you seen any pictures or other depiction

1 of any wounds or injuries inflicted as a result of the
2 tasers in this case?

3 A No.

4 Q Are you aware of either of the plaintiffs
5 sustaining any injuries in this case?

6 A No, I'm not aware.

7 Q Did you ever ask that question?

8 A I may have with Mr. Sleigh, and it's my
9 understanding there was no -- no injuries.

10 Q Now, after the plaintiffs were tased the first
11 time, and I believe you said that was for about a
12 second, did they separate themselves from the barrel?

13 A The female did, but it wasn't clear based on
14 testimony that I heard in the deposition whether she
15 simultaneously separated herself as she was being tased
16 again or as she was about to be tased. It wasn't clear
17 in the deposition. So she releases her -- from -- she
18 releases from the barrel, either just prior to the
19 second attempt to tase her or at the same time, and she
20 immediately releases.

21 Q Before using the taser a second time would you
22 agree that the officers warned the plaintiffs that they
23 would be tased again if they didn't separate themselves
24 from the barrel?

25 A Yes.

1 Q Did the plaintiffs comply?

2 A No.

3 Q Do you know how long, and understanding that
4 you can't quite recall on Miss KilMurray, but how long
5 the tasers were deployed for the second time?

6 A I think it was a couple of seconds.

7 The premise was to increase the duration of
8 the length of the cycle with each progressive use of it.

9 Q There again do you recall which officer tased
10 which plaintiff?

11 A As we sit here right now, no.

12 Q But somewhere in this just before or
13 simultaneously with the second tasing your understanding
14 is that Miss KilMurray released herself; is that
15 correct?

16 A Yes.

17 Q Did she stand up on her own?

18 A I don't recall.

19 Q Do you know whether she was able to walk to
20 the police --

21 A Oh, yes.

22 Q -- cruiser on her own?

23 A Yes.

24 Q After she was taken to the police cruiser do
25 you know what attempts the officers made to remove

1 Mr. Crowell from the barrel?

2 A Yes.

3 Q What were those attempts?

4 A From my recollection, they again discussed
5 with Mr. Crowell what was going to occur. They had
6 mentioned that they were going to increase their
7 duration of the tase cycle and that, you know, you've
8 satisfied what you wanted to satisfy by being here, the
9 media has come out.

10 I think they just tried to talk him through it
11 again, and he still remained attached.

12 Q Do you know if they made any efforts to
13 maneuver the barrel in any fashion?

14 A Not based on the records that I have.

15 Are you referring to Mr. Crowell or the
16 police?

17 Q That the police made some efforts to somehow
18 maneuver the barrel in some fashion.

19 A Yes, I believe that in the beginning when they
20 were both attached to the barrel they tried to move the
21 barrel with them in there and that created some pain
22 towards the protestors. That's the only time that I
23 recall that the barrel was -- they attempted to move the
24 barrel.

25 Q So just to be clear you don't recall any

1 subsequent efforts to manipulate the barrel by the
2 officers prior to Mr. Crowell being tased a third time?

3 A No, I don't recall that. If it's in the
4 record, I've overlooked it or can't remember it.

5 Q Do you agree that Mr. Crowell was warned that
6 he would be tased a third time if he did not comply with
7 the officers' request to release himself from the
8 barrel?

9 A Yes.

10 Q Did he comply?

11 A No.

12 Q Do you know how long the taser was used in the
13 drive stun mode the third time?

14 A A couple of seconds.

15 Q I take it you don't recall which of the
16 officers used the taser the third time?

17 A No. Once again I'm thinking it's perhaps Mr.
18 DiMarino, Officer DiMarino, but it could have been
19 Kirkpatrick. It could have been. It's obviously one of
20 those two individuals.

21 And it could have been a second; it could have
22 been a two-second. It -- you know, the length and
23 duration of those was questionable only in the sense of
24 what the officers were saying the length was.

25 Q What happened after the third tasing?

1 A Nothing. I don't believe that he released
2 himself, if I recall correctly.

3 Q So what happened after the third tasing
4 attempt?

5 A I think there was a discussion again as to
6 what was going to happen and that they were going to
7 give him a full five cycle shot of it if he did not
8 disengage.

9 Q Was there a fourth tasing?

10 A Yes.

11 Q What happened after the fourth tasing?

12 A Either -- the fourth, the fourth tasing and
13 the fifth tasing came almost around the same time. If I
14 recall correctly one of the officers was saying that
15 they tried it either on his hand, although there's some
16 discrepancy in was it the elbow, but the bottom line is
17 his hand moved and they tased him again, and then that's
18 when he said he'd had enough.

19 Q Did Mr. Crowell then release himself from the
20 barrel?

21 A Yes.

22 Q Once he released himself from the barrel,
23 what's your understanding as to whether or not he
24 cooperated with the officers?

25 A It's my understanding that he did cooperate

1 with the officers.

2 Q Do you know if he voluntarily stood up for the
3 officers?

4 A Oh, I don't recall.

5 Q Do you know whether he walked himself over to
6 the cruiser?

7 A You know, I -- no, I don't recall.

8 Q Was there anything that the officers did after
9 that last tasing with respect to Mr. Crowell in terms of
10 escorting him to the cruiser that you felt was
11 inappropriate?

12 A No.

13 Q Was there anything that the officers did in
14 the subsequent processing of either of the plaintiffs
15 that you felt was inappropriate?

16 A Not to my recollection.

17 Q Given the validity of the arrest, which you've
18 already indicated, is it your understanding that the
19 appropriate standard by which you evaluate use of force
20 would be Graham vs. Connor?

21 A Yes.

22 Q Would you agree that the right to make an
23 arrest necessarily carries with it the right to use some
24 degree of physical force?

25 A Yes.

1 Q Would you agree that police officers are not
2 required to use the least intrusive degree of force
3 possible to affect an arrest?

4 A That's correct. Only that it is reasonable.

5 Q Let me ask you, given the fact that you have
6 two individuals who have been placed under arrest who
7 are refusing lawful commands of the police, in your view
8 is any use of force appropriate?

9 A Given the circumstances at hand no force was
10 appropriate in this case.

11 The trespassers accomplished what they wanted
12 to accomplish based upon what has transpired, Counselor.

13 Q So in your view absolutely no use of force was
14 appropriate in this case; is that correct?

15 A Given the totality of circumstances, no force
16 was necessary.

17 Q Now, it appears from your report that you are
18 of the opinion that it is appropriate to use a taser in
19 those situations in which there is active or aggressive
20 resistance. Is that an accurate statement?

21 A That's an accurate statement.

22 Q Would it be accurate to define active or
23 aggressive resistance as an individual who is thwarting
24 the attempt of an officer to take them into custody?

25 A No.

1 Q If an officer was for example attempting to
2 handcuff the suspect and the suspect made an evasive
3 maneuver, would it be appropriate to use a taser in that
4 case?

5 A It depends on what the evasive maneuver is,
6 the extent of the evasive maneuver, the type of crime
7 that the individual is being arrested for. There's a
8 variety of other variables.

9 Q Would you consider an evasive maneuver when an
10 officer was trying to handcuff a suspect as passive or
11 active resistance?

12 A It all depends on how he's trying to evade the
13 officer. Is he walking away from him? Is he not
14 complying with the order to come forward? Is he
15 immediately turning around to elbow the officer? Those
16 are variables, ma'am, that you're going to have to be a
17 little bit more specific on that.

18 Q Let's assume that when an officer is
19 attempting to handcuff the individual the individual
20 walks away. Do you consider that to be passive or
21 active resistance?

22 A Passive.

23 Q Let's assume that the individual wraps himself
24 around a basketball pole.

25 A Right.

1 Q Would that be active or passive resistance?

2 A Passive.

3 Q So in your opinion would an individual
4 actually have to make some sort of gesture at the
5 officer to be active resistance?

6 A You would have to clarify that a little bit
7 further. A gesture could be something like that
8 (indicating), or a gesture could be a facial --

9 Q Does there have to be physical contact between
10 an individual and an officer for there to be active
11 resistance?

12 A Yes.

13 Q Is a swing at an officer active or passive
14 resistance?

15 A Active.

16 Q What about waving one's arms? Is that active
17 or passive resistance?

18 A It depends on how it's used.

19 Q So would it depend upon the view of the
20 officer who's on the scene?

21 A It depends on the actions of the individual
22 and the officer on the scene.

23 Q Let me ask you, would you agree that one risk
24 in not removing an arrestee from a scene is that
25 sometimes outsiders who have a close relationship with

1 the person who's arrested may intervene in the process
2 and the situation escalates?

3 A It could possibly happen.

4 Q Is it reasonable for police officers to be
5 concerned that if they don't take action to remove an
6 arrestee from the scene that other people might show up
7 and actually outnumber the police?

8 A Given the circumstances at hand, there's no
9 indication that regardless of the amount of people that
10 were on the scene or were theoretically going to arrive
11 were violent. So the fact that somebody shows up on the
12 scene doesn't necessarily mean that the officers have to
13 be overtly concerned that there's going to be violence
14 generated towards them.

15 Q So do you think it's unreasonable for an
16 officer to be concerned that if, in fact, they don't
17 remove an arrestee from the scene that in fact other
18 people could arrive and they could outnumber the police?

19 A And -- of course they could outnumber the
20 police, but what would be -- you see, now you're asking
21 me to conjecture. Is it an unruly crowd? Are they
22 throwing rocks and bottles? What's the nature of the
23 crime and what is the purpose of the arrest -- not the
24 arrest, but the incident which precipitated the arrest?
25 And you have to take in a totality of circumstances

1 relative to that.

2 So if you have, as you have on a traffic
3 homicide scene in a particular intersection, you will
4 have -- police officers will have up to 50, 60, maybe a
5 hundred people standing around looking and milling
6 around. Does that necessarily mean they have to call in
7 more officers because there's a crowd there? No.

8 Q So would you in your opinion think officers
9 should take a wait and see approach in terms of
10 assessing the temperament of the crowd once they show
11 up?

12 A It depends on the incident that we're talking
13 about, Counselor, so I can't answer that question with a
14 correct answer. You have to be more specific.

15 Q What's your understanding, if any, regarding
16 whether any of the people from the first day showed up
17 during the arrest on the second day?

18 A I think a few folks showed up from the
19 previous day. I don't know how -- I don't have -- it's
20 not articulated clearly in the report as to how many
21 showed up.

22 Q Did you take back those articles?

23 (Witness produces documents.)

24 Q Thanks.

25 You mentioned that you looked at the standards

1 for CALEA, is that correct, and specifically was it
2 1.3.1?

3 A Yes.

4 Q Can I just see that, please?

5 A Sure. There you go.

6 (Witness produces documents).

7 Q Thank you.

8 So 1.3.1 states that a written directive
9 states personnel will use only the force necessary to
10 accomplish lawful objectives; is that correct?

11 A Yes.

12 Q Is that the only portion of the CALEA
13 standard, 5th edition, that you looked at in connection
14 with this case?

15 A I reviewed the entire chapter, but with
16 regards to specifically being enumerated in the policy
17 that's the one I looked at.

18 Q What importance in your view does 1.3.1 have
19 with respect to this case?

20 A They cited it. I wanted to see what that
21 citation was, meaning what the standard was, and if it
22 indeed was in compliance with that particular standard.

23 Q And your opinion with respect to whether or
24 not it complies with that particular standard?

25 A Yes, the most recent version of it does, yes.

1 Q You're talking about policies?

2 A That's correct. Isn't that what you were
3 asking?

4 Q I think we got a little bit in a circle, but
5 that's okay.

6 A Okay. Fire away.

7 Q Was your purpose in reviewing 1.3.1 to
8 determine whether the policy of the police department
9 complied with the CALEA standard?

10 A Yes.

11 Q And as I understand it from your testimony
12 just now in your opinion the 2008 policy does in fact
13 comply with the CALEA standard?

14 A Yes.

15 Q Did you compare the earlier policies with this
16 standard?

17 A Yes.

18 Q Did you have an opinion as to whether the
19 earlier policies complied with this standard?

20 A No, the earlier policies were too vague and
21 really did not provide the direction that the -- an
22 officer would need when it involved use of force.

23 Q Would you agree that direction, in terms of
24 use of force, is covered in training of officers?

25 A Yes, it could be covered in training of

1 officers, but you'd have to take a look at what the
2 content and the lesson plan was relative to that
3 training and does it comport with state statute and
4 national standards.

5 Q Did you review any training material in this
6 case to determine whether or not the officers were
7 trained in the use of force that complied with that
8 CALEA standard?

9 A No, I have not. I've asked, but I have not
10 received.

11 Q Now, Mr. Scott, have you had any particular
12 involvement, any kind of role, with IACP?

13 A Yes.

14 Q Can you tell me what that's been.

15 A Yes. I'm a member, have been a member for
16 approximately eight years. I am actively involved in
17 two committees with IACP. One is the forensics
18 committee and the other committee is the crime
19 prevention committee.

20 Q How long have you been involved with those two
21 committees?

22 A About five and -- five years for the crime
23 prevention; about four years for the forensics
24 committee.

25 Q Is there a use of force committee?

1 A No, not to my knowledge.

2 Q Now, I take it you're familiar with PERF?

3 A Yes, Police Executives Research Forum, yes,
4 and I'm a member of that.

5 Q How long have you been a member?

6 A Approximately four or five years.

7 Q Is PERF an organization that law enforcement
8 agencies might look to for guidance in terms of what
9 operational practices are accepted in police work?

10 A It's a think tank, yes.

11 Q Do you have any particular role with PERF the
12 way you do with IACP?

13 A No, I do not..

14 Q I think according to your report you indicate
15 that your opinions are supported by policies or
16 standards of IACP, CALEA and PERF; is that correct?

17 A Yes.

18 Q Did you review any other policies, standards
19 or guidelines regarding use of force or tasers in
20 formulating your opinion?

21 A No.

22 Q So CALEA was the 1.3.1, correct?

23 A Yes.

24 Q Was there any other model policy --

25 I'm sorry, CALEA was standards. Any other

1 CALEA standards that you considered in reaching your
2 opinion in this case?

3 A I'd say the whole chapter, use of force, all
4 the standards related to use of force I looked at, but
5 the bottom line is 1.3.1 is the one I focused on solely
6 because it was mentioned within the Brattleboro Police
7 Department policy.

8 Q We've marked as Deposition Exhibit 7 the IACP
9 model policy with respect to electronic control weapons,
10 correct?

11 A Yes.

12 Q Is this the sole model policy that you
13 reviewed from IACP in formulating your opinion?

14 A Yes.

15 There is no other model policy. There is no
16 other entity that creates a model policy for law
17 enforcement.

18 Q Mr. Scott, let me ask you, do you agree that
19 non-deadly force may be used to restrain or subdue a
20 resistant subject?

21 A Less lethal force, yes.

22 Q Would you agree that it's a generally accepted
23 standard for use of force that less lethal force may be
24 used to restrain or subdue a resistant subject?

25 A I wouldn't say restrain. Maybe you could

1 clarify that. But to subdue a violently resisting
2 subject who is going to either kill or use great
3 bodily -- do great bodily harm to an individual, yes,
4 deadly force is appropriate.

5 Q No, I'm sorry, I said non-deadly.

6 A I'm sorry. So repeat the question then, I'm
7 sorry.

8 Q Okay. Do you agree that it's a generally
9 accepted standard for use of force that - well, I
10 actually tried to use less lethal because you seemed to
11 like that term better - less lethal force --

12 A That's the industry standard in law
13 enforcement, less lethal.

14 Q Okay. That that may be used to restrain a
15 resistant subject?

16 A Actively resistant person, yes.

17 Q So in your view is it appropriate to use a
18 taser on an actively resisting subject?

19 A Who is physically resisting, yes, based upon
20 the totality of the circumstances.

21 Q So I take it that it is your opinion that it
22 is not appropriate to use a taser on a passively
23 resistant subject; is that correct?

24 A That's correct, which is also corroborated
25 through Graham vs. Connor.

1 Q Would it be fair to say that the basis for
2 your opinion that the taser was excessive then and
3 inappropriate comes from your view that the plaintiffs
4 were passively resisting as opposed to actively
5 resisting?

6 A It's very clear that they were passively
7 resisting.

8 Q So is the answer then yes?

9 A Yes. Sorry.

10 Q In your report you indicate that, "The taser
11 falls within the level of force used for individuals who
12 are actively (physically) resisting an officer by
13 thwarting his ability to arrest him/her by physically
14 pushing or punching the officer," correct?

15 A Uh-huh. Yes.

16 Q So are you saying that the suspect has to make
17 actual physical contact with the officer in order to be
18 considered actively resisting?

19 A Yes.

20 Q And if a suspect makes physical contact with
21 the officer, then in your view is the officer entitled
22 to use a taser?

23 A Yes, and let me clarify my previous statement.

24 The individual who's actively resisting an
25 officer does not necessarily have to physically strike

1 the individual, but can show that he is going to make
2 that strike. So the officer doesn't necessarily have to
3 get punched before he can use the taser.

4 So I -- I just want to make sure we clarify
5 that.

6 Q So in your opinion can an officer ever use a
7 taser if someone is fleeing?

8 A It depends on the nature of the crime.

9 Q Let's assume that it's a misdemeanor offense
10 and not --

11 A And a misdemeanor is?

12 Q It doesn't involve physical violence.

13 Can an officer use a taser on the suspect if
14 the suspect is fleeing the scene?

15 A You've got to be a little bit clearer on that,
16 Counselor. I mean, there's just so many misdemeanors.
17 It all depends on the misdemeanor. It depends on the
18 circumstances.

19 Q Is there a misdemeanor that you're comfortable
20 with an officer using a taser on the suspect if the
21 suspect is fleeing?

22 A Sure. If an individual who takes a swing at
23 somebody and has a stick misses and sees the officer and
24 the officer says freeze, halt, yeah, that would be
25 appropriate, sure, because he used some physical

1 violence or attempted to use some physical violence
2 towards either the officer or another individual, sure.

3 Q So for you does the test seem to be using
4 physical violence or attempting to use physical
5 violence?

6 A Yes, given the circumstances that you've just
7 discussed.

8 Q So how do you define passive resistance and
9 active resistance?

10 A Noncompliance.

11 I think I've described what active resistance
12 is.

13 The passive resistance is noncompliance:
14 Sitting down, not getting up, not listening to the order
15 of the police officer, not creating any type of a threat
16 to the officer, in conjunction with the type of crime
17 that the individual allegedly committed. And what is
18 the immediate threat to the officer, in addition to is
19 the individual a threat to the community if he is
20 allowed to run or flee, those types of things. Those
21 are all important in making those determinations as to
22 when to use force.

23 Q So specifically, Mr. Scott, where did you get
24 your definitions of passive resistance and active
25 resistance?

1 A Based upon my training over the course of, I
2 don't know, 30-plus years.

3 Q Is there any particular standard that you
4 looked at, whether it be IACP, CALEA, PERF, to determine
5 what the standard is for active versus passive
6 resistance?

7 A No, I don't have that definition here. It's
8 based upon my 30 years of training throughout those
9 years and understanding the issue of passive resistance
10 does not involve violence or the threat of violence.

11 Q Let's assume that the officer did not have the
12 benefit of your 30 years of experience. Would it be
13 reasonable for an officer to turn to CALEA, IACP or PERF
14 to determine what constitutes passive resistance versus
15 active resistance?

16 A It could very well have been, but then we have
17 the fundamental issue of failure to train by a law
18 enforcement agency to a younger officer that does not
19 have the benefit of my experience but should have had
20 that appropriate training as to define what passive
21 resistance is and what active resistance is. That's an
22 issue that is fundamentally a problem throughout the
23 United States with law enforcement agencies, their
24 failure to train properly.

25 Q All right. Well, assume that I'm a trainer

1 and I'm going to train an officer. Would it be
2 appropriate as a trainer to look to CALEA, IACP and PERF
3 to determine, I'm going to instruct somebody, what is
4 passive resistance and what is active resistance?

5 A Sure, you would want them to go towards those,
6 but those are not the sole repertoire so to speak of
7 information relative to passive or resistant (sic).
8 You'd have to take a look at your state statutes. You'd
9 have to take a look at obviously local ordinances, so on
10 and so forth. So -- if it is there. Sometimes they're
11 not discussed within the state statutes.

12 Q Did you look at any Vermont state statutes
13 to --

14 A I tried to. I was not able to access them.
15 So for this deposition no, I did not.

16 Q Did you look at any local ordinances?

17 A No, I did not.

18 Q Now, let me ask you, I assume you're aware
19 from your review of the police reports that Mr. Crowell
20 was pushing the officers away as they were attempting to
21 remove the sleeping bag from him prior to using the
22 taser; is that correct?

23 A I didn't hear that -- I didn't read anything
24 that said that he was pushing them away. It indicated
25 that he was trying to prevent them from getting the

1 sleeping bag off of them and he resisted that, tried to
2 kick them.

3 Q Is attempting to kick an officer a form of
4 active resistance?

5 A Yes. In that sterile universe, yes, that
6 you've just explained.

7 And if that was indeed the case, given the
8 scenario, the -- and if the officers felt that the
9 individual was a flight risk and that he had the ability
10 to hurt them and that the crime was of such severity,
11 yeah, the officers would have been authorized to use the
12 taser in that sense, but that was not the case in this
13 situation.

14 Q In a situation if Mr. Crowell used his arm to
15 push the officers away from him, would you consider that
16 active resistance?

17 A No, given the fact that he had a 300-pound,
18 55-gallon drum that he was attached to and that he was
19 immobile. There was no way that he was going to flee.
20 There was just no way.

21 Q Let me ask you, Mr. Scott, would you agree
22 that the plaintiffs in this case signaled an intent to
23 avoid or prevent being taken into custody?

24 A Yes.

25 Q Now, you've also stated in your report that

1 the decision to use the taser in the drive stun mode was
2 not consistent with the use of force continuum concept?

3 A Yes.

4 Q When you use use of force continuum, what is
5 your understanding of what the use of force continuum
6 consists of?

7 A It's a sliding scale provided for law
8 enforcement officers that provides them with the levels
9 of force and the applicable response that is occurring
10 by the individual that they are going to apply force to,
11 and that force starts as simple as presence and goes all
12 the way up to deadly force.

13 Q What are the steps in between as you
14 understand them?

15 A Communication after presence, soft hand, hard
16 hand controls, impact weapons, deadly weapons.

17 Q Where would O.C. spray fall under your
18 continuum?

19 A It falls into -- and each state has -- you
20 know, each state doesn't necessarily have a uniform use
21 of force continuum, but it falls into the level three.

22 Q And by level three you mean what?

23 A Hard hand.

24 Q What about tasers?

25 A Same thing.

1 Q I assume the asp would be an impact weapon?

2 A Yes.

3 Q Do you know if the use of force continuum was
4 in place in Brattleboro in 2007?

5 A Yes.

6 Q Would it be the same continuum as you've just
7 described?

8 A Based on what I've seen and heard in the
9 depositions, yes.

10 I have to take another break. I'm sorry to
11 mess up, but I've got to make a phone call and go to the
12 bathroom.

13 Q Okay.

14 (Thereupon, a recess was taken, after which
15 the following proceedings were had:)

16 MS. SHEAHAN: Where did I leave off?

17 (Thereupon, the portion referred to was read
18 by the reporter as above recorded.)

19 Q (By Ms. Sheahan) I think you may have already
20 stated this, Mr. Scott, but would you agree that the use
21 of force continuum can vary even among a particular
22 state?

23 A Yes.

24 Q In other words different agencies within a
25 state can use different continuums of force, correct?

1 A Yes.

2 Q So I take it then there's no national use of
3 force continuum that police officers follow?

4 A No, but there's pretty much -- there are
5 parameters. I mean, the use of force continuums are not
6 so diverse throughout the country, the ones that I've
7 seen. They may have five steps as opposed to six, or
8 they may have seven steps as opposed to five or six.

9 Q And they can have ladders and wheels and
10 pyramids; is that true?

11 A I'm not understanding that, I'm sorry.

12 Q In terms of models.

13 A Oh, yes, yes.

14 Q Okay.

15 A Yes, they can.

16 Q Now, let me ask you, in this case were the
17 officers in uniform?

18 A Yes.

19 Q So that would constitute officer presence,
20 correct?

21 A Yes.

22 Q Was officer presence enough to be successful
23 in this case?

24 A No.

25 Q Did the officers use verbal commands?

1 A Yes.

2 Q That would fall under, I think you term it as
3 communication; is that true?

4 A Yes.

5 Q Were those efforts successful?

6 A No.

7 Q I think you've already testified that the
8 officers attempted to separate the plaintiffs from the
9 barrel by moving it, digging out the dirt, that type of
10 thing, correct?

11 A Yes.

12 Q So would that be using soft hand control?

13 A Yes.

14 Q Was that successful?

15 A No.

16 Q In fact, there was really no way for the
17 officers to unlock the plaintiffs from this barrel; is
18 that correct?

19 A No, I wouldn't say that. It would have taken
20 a considerable amount of time and effort, but it could
21 have been done, but it would have been -- it would have
22 taken quite a while.

23 Q Would it have exposed the plaintiffs to some
24 risk of injury to do that?

25 A Yes.

1 Q Now, when you state in your report that the
2 officers failed to utilize any other type of technique
3 to persuade the plaintiffs to comply, are you
4 disregarding officer presence?

5 A No.

6 Q Are you disregarding verbal commands or soft
7 hand techniques?

8 A No.

9 Q So --

10 A They could have very easily have allowed the
11 individuals to remain there until they voluntarily
12 departed.

13 Which, by the way, they said they were. It
14 just wasn't within the timeframe that the officers
15 wanted it to happen.

16 Q So in your view should the officers just have
17 allowed them to remain on the premises until the
18 plaintiffs were prepared to leave?

19 A Given the totality of the circumstances,
20 absolutely. There was absolutely no need to use any
21 type of force on such a minor, minor situation,
22 misdemeanor obviously at best. It was not creating a
23 traffic jam. There was no threat to any individual.
24 The crime was trespass, and perhaps resisting an
25 officer's lawful order. You know, you could go with a

1 bunch of misdemeanors on this. But the bottom line is
2 they were nonviolent. They had no intention to be
3 violent. The officers wanted them to move. They
4 weren't going to move at that particular time, and so,
5 you know, levelheadedness must come into play on some of
6 these things, and a little bit of patience would have
7 been far more appropriate than the use of a taser. The
8 taser is not to be used on a passive resistant
9 individual.

10 And if you really want to take this one step
11 further, those individuals were handcuffed. They were
12 cuffed, or they were tied into, through their carabiner,
13 to the barrel. So they really weren't providing
14 anything other than a simple trespass on a vacant lot
15 during a rainy day.

16 Q Is there any requirement that an officer
17 permit an arrestee to dictate the time and manner in
18 which they're taken into custody?

19 A Repeat the question, I'm sorry.

20 MS. SHEAHAN: Actually, can you just read the
21 question back.

22 (Thereupon, the portion referred to was read
23 by the reporter as above recorded.)

24 A No. But every circumstance is different,
25 Counselor. Common sense is a wonderful thing, patience,

1 prudence.

2 And if I recall correctly, now that I
3 remember, the chief in his comments were, you know,
4 don't use any -- don't be heavy-handed with these
5 individuals. So even the chief, with his brief meeting
6 with Lieutenant Kirkpatrick, clearly states hey, listen,
7 you know, take it as it goes and -- you know, patience
8 was the key, along with, I guess, and some common sense.

9 Q So would you have allowed these protestors to
10 remain on the property for days?

11 A Sure. My contention is they've committed a
12 misdemeanor. The landowner had no use for the property.
13 Understanding the landowner wants them off, but that
14 probably wouldn't have been days, but we don't know,
15 obviously they needed to use the facility, unless they
16 were going to defecate and urinate on themselves; they
17 were going to need some food and what have you. Yeah,
18 days would have been -- it would have been fine. If it
19 was my jurisdiction and that was the issue and I've got
20 a property owner that's not all over me -- and even if
21 he was all over me or she was all over me with regards
22 to I want them off the property, you've just got to use
23 common sense here. They weren't blocking traffic and
24 they were of no harm to anybody.

25 Q So if the property owner was coming to you and

1 insisting that they wanted these individuals off their
2 property, what if anything would you have done?

3 A Exactly what I've discussed with you right
4 now. I would have continued to do what those officers
5 were doing in the sense of cajoling, explaining to them,
6 trying to get them to use a little bit of their own
7 common sense. Obviously time was on the side of the
8 police officers. This was not an issue of a felony.
9 This was not an issue of community safety.

10 Q Would you have left the officers on scene
11 until such time as the plaintiffs determined that they
12 were going to release themselves?

13 A Sure, sure.

14 Q And if that took days you would have left the
15 police officers there on scene for days?

16 A Of course I would have rotated the officers
17 out there. Sure. Why not? It's far less expensive
18 than what they're paying us now.

19 And I'm not trying to be a smart aleck on that
20 one, but that's -- that's pretty much the truth.

21 Q No, I just want to understand. So, regardless
22 of how long it took, you would have had police officers
23 staying there on the scene until the plaintiffs
24 determined that they were going to release themselves
25 from the barrel?

1 A Or better yet, we could have provided them
2 with a -- some type of mandatory notice to appear, left
3 them there if they desired. They would have eventually
4 left without having a police officer there. And compel
5 them to come to court, or demand that they go to court.
6 You know, we have what we call a P.T.A., promise to
7 appear. That could have been issued, if it wasn't
8 issued, and they could have been compelled to go to
9 court.

10 Q If they ignored, and we don't have P.T.A., but
11 if they ignored the Court's direction that they show up
12 in court, what would you have the officers do?

13 A Well, there would be a warrant for their
14 arrest I would imagine based on failure to appear.

15 Q What, if anything, would you have had the
16 officers do if there was a warrant?

17 A Are you talking about them still being there
18 present?

19 Q Yes.

20 A Oh, well, I'd probably keep them there.

21 You've got to understand that we want to place
22 into our officers the ability to make arrests and not to
23 be thwarted, but in the big global scheme, Counselor,
24 common sense has got to prevail. They are doing nothing
25 but sitting on a piece of dirt, hurting nobody. The

1 trespass is not violating anything.

2 Or, if you wanted to, you could definitely
3 make an effort to crack open that container, crack open
4 the barrel. You could do that. That's an option.

5 Q But just so I'm clear in terms of, you know,
6 what your reaction would have been.

7 So, if necessary - there's a warrant issued
8 for their arrest because they failed to show up in court
9 in response to the citation - you would have still had
10 the officers remain on scene with the plaintiffs?

11 A If I knew who they were, okay, as we do here,
12 I knew who they were, sure, that -- you know, the
13 warrant -- the warrant is a warrant, and the bottom line
14 is they could be picked up now if they were to release
15 themselves or they could be picked up later somewhere
16 down the line.

17 It's very clear that warrants are the
18 preferred method in many cases versus a physical arrest
19 on the scene, particularly when it involves felonies and
20 what have you when you do investigations.

21 Q Would you have permitted the officers to use
22 any other level of force if there was a warrant in
23 place?

24 A The warrant is of such a minor nature. The
25 crime here, Counselor, is such a minor nature that I

1 wouldn't have expended that kind of time and effort.

2 Q So it sounds like at least in your opinion it
3 doesn't matter if there's a warrant or not a warrant.
4 It's just that the nature of the offense in your view is
5 so trivial that it doesn't rise to the level of using
6 any force; is that correct?

7 A That is my opinion in this, given this, the
8 totality of the circumstances, absolutely.

9 Now, mind you, the major issue here that is
10 preventing them from being physically removed is that
11 barrel full of concrete, rebar and dirt. That has
12 made -- that is indeed the issue as to why they're not
13 being physically removed.

14 Q Do you believe that the government has any
15 interest in arrests being made efficiently and without
16 wasting police resources?

17 A Do they have any obligation? Ideally that's
18 what we would like government to do but, Counselor, as
19 you can see government doesn't do it that way. So to
20 answer your question, in the ideal world yeah, we want
21 to be efficient. Practicality and reality, no,
22 absolutely not, we're not efficient.

23 Q In your view that the police officers should
24 remain on scene for as long as it might take, would you
25 take into consideration that police presence may be

1 needed at some other event within the jurisdiction?

2 A Sure. I'd call in somebody for overtime.

3 Absolutely. Understanding that given the small nature
4 of the police department, I'd definitely call somebody
5 in for overtime or call somebody in to work that
6 particular detail, obviously rotating them out if it was
7 necessary.

8 Q Mr. Scott, what is a lesser use of force,
9 using the taser in the drive stun mode or using it with
10 the probes?

11 A I can't answer that. Both -- they do
12 different things.

13 If you're suggesting that the probe deployment
14 would have been appropriate versus the drive stun,
15 absolutely not.

16 Q Not my suggestion, but just the question.

17 A Okay. Because it did come up by the --
18 Mr. -- Officer DiMarino that it was his suggestion that
19 they use the probe.

20 Q But, just to be clear, the probes were not
21 used in this case; is that correct?

22 A That is correct.

23 Q I believe you answered this and I apologize if
24 you have, but did you review the IACP model policy on
25 use of force?

1 A No, I did not.

2 May I take Exhibit 7? May I take a look at
3 it?

4 Q Oh, sure.

5 Does CALEA have a model policy or guidelines
6 for the use of tasers or other electronic devices?

7 A Not that I'm aware of, and I did have a call
8 into them and I didn't get a call back. They should,
9 but I haven't seen it and I've ordered the most recent
10 edition. I think they're into a 6th edition. So they
11 might have one.

12 Q So clearly if they do it's not something that
13 you relied upon in reaching your opinion in this case?

14 A No.

15 And the other thing with regards to CALEA
16 standards is they suggest and recommend that a policy
17 should be created for a particular topical area. They
18 tell you what the topic is. They don't tell you what
19 the policy should be.

20 Q Now, you indicated in your report that your
21 opinion was supported by PERF literature, and what
22 literature from PERF did you view?

23 A I did not get that. I did not get that. I
24 asked specifically from PERF information on a white
25 paper on the taser and I have not received it. So I

1 apologize for that.

2 Q So did you rely upon any material from PERF in
3 reaching your opinions?

4 A No, with the anticipation that I was.

5 Q Did you have in the back of your mind that you
6 thought that there was some PERF literature that did
7 support your opinion?

8 A I was -- actually inquired with PERF and asked
9 them if they could send me any type of material that
10 they had. It's my understanding they have some material
11 but it's limited. But this is a topical area. This is
12 an important area for PERF, so I would imagine that they
13 have some.

14 Q Do you know if PERF has a model policy or
15 guidelines on use of force?

16 A I'm not sure, no.

17 Q Did you ask them specifically about tasers or
18 use or force or both?

19 A Taser.

20 Actually, to set the record straight, Taser is
21 a brand name. They -- there's agencies that use
22 electro-muscular disruption devices, or IACP uses
23 electronic control weapon. So Taser is a model and a
24 brand.

25 Q Right. I'm using it more in the generic

1 sense.

2 Mr. Scott, just to make sure that I understand
3 your distinction with respect to active and passive
4 resistance and when a taser is appropriate for use, what
5 if you have an individual, and we kind of alluded to
6 this, but what if you have an individual who is being
7 arrested for a nonviolent misdemeanor, let's say it's a
8 driving while license suspended or something like that,
9 and in the course of escorting that individual to the
10 cruiser he breaks away and wraps himself around a
11 basketball pole, I think I used before. Now, is that
12 active or passive resistance in your view?

13 A It's passive resistance.

14 Q Would it be appropriate or inappropriate for
15 an officer to use a taser on that individual if the
16 individual continued to refuse to comply with officer
17 directives to release himself from the pole?

18 A If the officers made a physical attempt to
19 remove him from the pole and as they stripped his arm
20 off of the pole and -- the individual grabs the pole
21 back or he resists the officers attempt to keep his arm
22 off the pole, that's physical resistance, of which I
23 would think the taser would be appropriate. He's
24 physically resisting the officer.

25 Q What if, just so I can try to understand, what

1 if an officer stops an individual for speeding and let's
2 just say, I don't know, he doesn't have appropriate
3 documents or whatever so the officer, under state law,
4 is entitled to arrest the individual, okay, and the
5 officer is in the process of escorting the individual
6 back to the cruiser and he simply drops to the ground
7 and refuses to get up, and the officer attempts to lift
8 the individual to his feet but he's too heavy, he goes
9 limp, and the officer can't do that, and he stays on the
10 ground?

11 A Passive resistance.

12 Q So would it be appropriate or inappropriate to
13 use a taser on that individual?

14 A I would say it would be inappropriate to use
15 the taser on that individual as a passive resistant
16 individual.

17 Q Would the time period matter, if this goes on
18 for a protracted period of time, say it's 15 minutes,
19 half-an-hour?

20 A All I can add to this, Counselor, what if it's
21 on a busy traffic side road; what if it's raining; what
22 if there's multiple accidents; what if, you know, the
23 officer's backup is two seconds away versus, you know,
24 35 minutes away? We can what-if this to death. All I
25 can tell you is based upon the totality of circumstances

1 and the mere dropping down, based upon somebody being
2 arrested, is not physical resistance. It's passive
3 resistance.

4 Q Do any of those outside factors, say it's a
5 busy road, say backup is coming, do those factors change
6 your view at all?

7 A Of course. That's why I mentioned it. And --
8 they do. They do play into some role.

9 For example, let's just say that they're so
10 close to the road that the individual -- the officer
11 can't pick the individual up, the individual is laying
12 there, they're so close to a major thoroughfare, and
13 that the officer is fearful that the individual or both
14 of them are going to get killed. Using the taser in a
15 drive stun mode I would think would be defensible and
16 appropriate given that specific circumstances.

17 We can do this for another eight hours --

18 Q We could.

19 A -- with the what-ifs --

20 Q We won't. We won't.

21 A -- with the what-ifs, Counselor, so -- I want
22 you to be aware of that.

23 Q All right. Let me just ask you though,
24 Mr. Scott, in the scenario that you just described, a
25 lot of traffic and everything, does the fact that

1 there's a lot of traffic change the suspect from a
2 passive to an active resister?

3 A No. I think the circumstances of the danger
4 and the inability of the officer to compel the
5 individual to do what he wants him to do --

6 And by the way, out of this scenario, is the
7 individual handcuffed?

8 Q Yes, let's say he's handcuffed.

9 A Okay. So --

10 Q So am I correct then that there are some
11 situations in which it is appropriate to use a taser on
12 a passively resisting individual?

13 A Some, but very rare, because there's no
14 definitiveness in anything we do, and if the officer can
15 articulate his reasonable use of that force, based upon
16 the totality of the circumstances, oh, sure, sure,
17 there's always exceptions.

18 But this is not the case. We're not talking
19 about that. We're talking about two people chained to a
20 barrel in a vacant field just trespassing.

21 Q I just want to be clear that there are then
22 situations when it is appropriate to use a taser on an
23 individual who is in your definition passively
24 resisting.

25 A Based on the brief scenario that you gave me,

1 yes.

2 Q And there are likely other scenarios, wouldn't
3 that be true?

4 A I would not deny that, absolutely.

5 (Interruption in the proceedings.)

6 Q Mr. Scott, have you consulted with anyone in
7 an effort to formulate your opinions in this case?

8 A No.

9 Q I apologize once again because I think you
10 answered this question, but have you seen any
11 definitions of passive and/or active resistance from
12 CALEA, IACP or PERF?

13 A Not to my recollection.

14 Q Did you make any attempt from those
15 organizations to find out whether there were such
16 definitions?

17 A I don't recall, to be honest with you.

18 Q You stole that policy away, didn't you?

19 A Oh, I have it here.

20 Q Can I just see it for a second.

21 (Thereupon, the request was complied with.)

22 Q Thanks.

23 To be clear, Mr. Scott, in your opinion would
24 it also have been inappropriate for the officers to use
25 pepper spray in this situation?

1 A I don't think pepper spray would have been an
2 appropriate use of force either.

3 Q And the reasons for that?

4 A First and foremost it's uncomfortable, as
5 we've discussed with the use of the drive stun. It also
6 would create a logistics problem so to speak because you
7 need water and it's a long-term effect.

8 So I don't think force of any kind would have
9 been appropriate or necessary in this.

10 Are you going to take those away from me?

11 Q No. I just may get copies of some of them.

12 No, I won't take them away from you.

13 A Yeah, we'll get copies.

14 Q There are actually very few documents -- I
15 mean, I think I have most of them, but there are a few
16 of them that I probably would ask you to copy.

17 MS. SHEAHAN: Off the record.

18 (Thereupon, a discussion was had off the
19 record.)

20 Q Just with reference to Exhibit 7, Mr. Scott,
21 what portion of the IACP model policy did you consider
22 in terms of your opinion in this case?

23 A Well, I considered the entire policy
24 naturally, but in particular the deployment
25 prohibitions, specifically, "It is forbidden to use the

device as follows," this is C(1)(a), "In a punitive or
coercive manner; (b) on a handcuffed or secured prisoner
absent overtly assaultive behavior that cannot be
reasonably dealt with in any other less intrusive
fashion;" and then, "(c) on any suspect who does not
demonstrate an overt intention, (1) to use violence or
force against the officer or other person, or (2) to
flee in order to resist or avoid detention or arrest (in
cases where officers would pursue on foot)."

10 And that is it.

11 Q If I can just see that back for a second.

12 (Thereupon, the request was complied with.)

With respect to those considerations,

14 Mr. Scott, in your opinion did the officers use the
15 tasers in a punitive or coercive manner?

A Coercive.

17 Q Coercive in terms of trying to get the
18 plaintiffs to comply with the officers' directives?

19 A Yes.

20 Q The officers had not handcuffed the
21 plaintiffs; is that correct?

22 A No. They did a pretty good job themselves
23 attaching themselves to the 300-pound, 55-gallon drum.

Q So are you treating them as handcuffed
prisoners for purposes of this model policy because they

1 themselves had handcuffed themselves in the barrel?

2 A That's correct, and they incapacitated
3 themselves from doing any type of violence towards the
4 officers.

5 Q But to be clear, Mr. Scott, would you agree
6 that they were not totally incapacitated in that they
7 had it within themselves to be able to release
8 themselves from the barrel?

9 A That's correct, but they were incapacitated --
10 there was no time that they were not incapacitated from
11 that barrel -- I mean removed from that barrel while the
12 officers were there. There was no time until excessive
13 force was used.

14 Q Would you agree, Mr. Scott, that there is no
15 way for the officers to know what, if anything, the
16 plaintiffs had inside the barrel?

17 A No.

18 Q No, you would not agree?

19 Sorry, bad question.

20 A No, the officers did not know what was inside
21 that barrel, but none of them articulated any concern
22 relative to what was inside that barrel, i.e. did they
23 have weapons. Their predominant concern was how are
24 they hooking themselves together.

25 Q But you do agree that there's no way for the

1 officers to know what the plaintiffs had inside the
2 barrel?

3 A That's correct, and none of the officers
4 articulated any fear of what might have been in that
5 barrel. There was no discussion to that whatsoever.

6 Q Mr. Scott, just in terms of your
7 interpretation of C(1)(c), the second part regarding
8 fleeing, do you interpret that to mean that this only
9 applies in cases where officers pursue on foot?

10 A No, that is -- if I am interpreting this
11 correctly, on any suspect that does not give an overt
12 intention of fleeing or to use violence or force against
13 the officers.

14 These individuals gave no intent to flee. As
15 a matter of fact, just the opposite. Their intent was
16 to stay. And so there was no need. And based on the
17 IACP model policy it was inappropriate to taser the
18 individuals. They were not going to flee. They were
19 not going to use violence against the officers.

20 Q So conversely then, Mr. Scott, does that
21 section mean that it is appropriate to use a taser on a
22 fleeing suspect?

23 A No. It also says -- it's also inappropriate
24 to use the taser -- it says, "To flee in order to resist
25 or avoid detention or arrest in cases where officers

1 would pursue on foot."

2 Q Right. I know what it says, but how do you
3 interpret that?

4 A Oh, I understand. Okay. I missed that, that
5 they could use it on a fleeing suspect.

6 Q I think I might be done, if it were possible
7 to get just copies of those three. I don't have any
8 further questions.

9 MS. SHEAHAN: David?

10 MR. SLEIGH: None for me.

11 MS. SHEAHAN: Thank you, Mr. Scott.

12 (Thereupon, a recess was taken, after which
13 the following proceedings were had:)

14 THE COURT REPORTER: Mr. Scott, reading or
15 waiving?

16 THE WITNESS: Reading.

17 THE COURT REPORTER: Will you be ordering the
18 transcript?

19 MS. SHEAHAN: Yes.

20 THE COURT REPORTER: Would you like a copy?

21 MR. SLEIGH: Yes.

22 (Thereupon, the deposition concluded at 4:15
23 p.m.)

24

25

1

2 RULE 1.310, FLORIDA RULES OF CIVIL PROCEDURE PROVIDES

3

4 (e) Any changes in form or substance which the
5 witness desires to make, shall be upon the deposition by
6 the officer with a statement of the reasons given by the
7 witness for making them.

8

PAGE	LINE	CHANGE	REASON
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1 I, ANDREW J. SCOTT, III, do hereby certify that I
2 have read the foregoing transcript of my deposition on
3 November 20, 2008; that, together with any additions or
4 corrections made herein, it is true and correct.

5

6

7

ANDREW J. SCOTT, III

8

9

10

11

12 I do hereby certify that the deposition of ANDREW
13 J. SCOTT, III was submitted to the witness for reading
14 and signing; that after he/she had read and examined the
15 deposition, he/she signed the same in the presence of
16 the undersigned authority on the _____ day of
17 _____ 2008.

18

19

20

21

Notary Public, State of
Florida at Large.

My Commission Expires:

22

23

24

25

CERTIFICATE OF OATH

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that the witness personally appeared before me and was duly sworn.

Lisa Gropper
LISA GROPPER, RPR

1 C E R T I F I C A T E

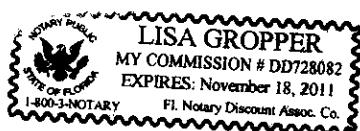
2 STATE OF FLORIDA)
3)
4 COUNTY OF PALM BEACH)

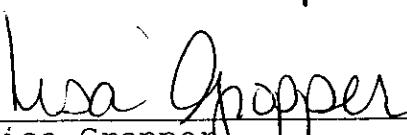
5 I, LISA GROPPER, Registered Professional Reporter
6 and Notary Public in and for the State of Florida at
7 Large;

8 DO HEREBY CERTIFY that the foregoing transcript, to
9 the best of my ability, is a true and complete record of
10 the testimony given by the deponent, who was first duly
11 sworn by me; that I am neither a relative or employee
12 nor attorney nor counsel of any of the parties, nor a
13 relative or employee of such attorney or counsel, nor
financially interested in the action.

14 This certification is expressly withdrawn and
15 denied upon the disassembly or photocopying of the
16 foregoing transcript of the proceedings or any part
17 thereof, including exhibits, unless said disassembly or
18 photocopying is done by the undersigned Court Reporter
19 and/or under the auspices of Palm Beach Reporting
20 Service, Inc.

21 Witness my hand and official seal in Palm Beach
22 County, Florida, this 24th day of November,
23 2008.




Lisa Gropper
Registered Professional Reporter

1 PALM BEACH REPORTING SERVICE, INC.
2 1665 Palm Beach Lakes Boulevard
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4 (561) 471-2995

5
6 November 25, 2008

7
8 Andrew J. Scott, III
9 750 Elm Tree Street
10 Boca Raton, Florida 33486

11 RE: CROWELL VS. KIRKPATRICK

12 Dear Mr. Scott,

13 This is a courtesy letter to inform you that the
14 deposition given by you on November 20, 2008 in the
15 above titled case has been transcribed and is ready for
16 your reading and signing.

17 If you will call my office any day Monday through
18 Friday, between the hours of 9:00 a.m. and 4:30 p.m. for
19 an appointment, a copy of the deposition will be
20 available for you to read and sign.

21 Thank you.

22 Sincerely,

23
24 Lisa Gropper, Court Reporter